

No. 15952 ✓

United States
Court of Appeals
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,
vs.
MOSS AMBER MFG. CO.,
Respondent.

Transcript of Record

Petition for Enforcement of an Order of the
National Labor Relations Board

FILED

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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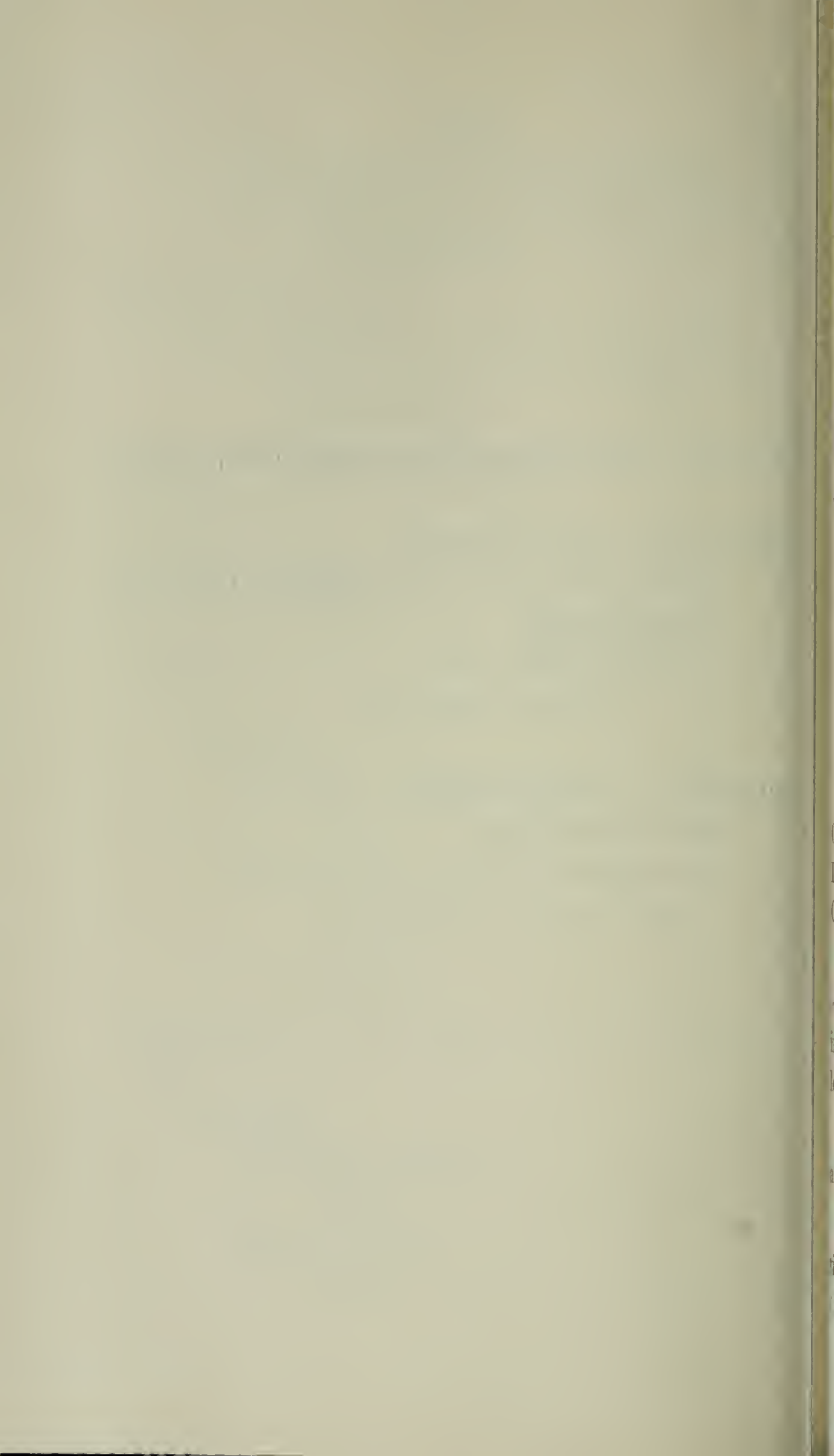
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For the Respondent.



GENERAL COUNSEL'S EXHIBIT No. 5-A

Form approved.

Budget Bureau No. 64-R002.8.

United States of America
National Labor Relations Board

PETITION

(Copy)

When this Petition is filed by a labor organization or by an individual or group acting in its behalf, the Petition will not be processed unless the labor organization and any national or international of which it is an affiliate or constituent unit have complied with section 9 (f), (g), and (h) of the National Labor Relations Act.

Case No.: 21-RC-4553.

Dated Filed: 9/5/56.

Compliance Status Checked by: /s/ EF.

Instructions—Submit an original and four (4) copies of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located.

If more space is required for any one item, attach additional sheets, numbering item accordingly.

Attachments Required—Except when this Petition is filed by an employer under section 9 (c) (1) (B) of the act, there must be submitted with the

Petition proof of interest in the form of dated authorization or membership application cards, or other documentary evidence signed by employees, together with an alphabetical list of their names.

The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority:

1. Purpose of This Petition:
 - A. RC—Certification of Representatives (Individual, Group, Labor Organization)—A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner, and Petitioner desires to be certified as representative of the employees for purposes of collective bargaining, pursuant to section 9 (a) and (c) of the act.
2. Name of Employer:

Moss-Amber.

Employer Representative to Contact: Mr. Moss.
3. Address of Establishment Involved:

1st Street, San Fernando.
- 4a. Type of Establishment:

Factory.
- 4b. Identify Principal Product or Service:

Men's Sportswear.
5. Description of Unit Involved:

Included: All cutters.

Excluded: All other production employees, shipping and office employees, maintenance employees, and supervisory employees as defined in the Act.

3a. Number of Employees in Unit:

4.

3b. Is This Petition Supported by 30% or More of the Employees in the Unit?

Yes.

(If you have checked box 1 A (RC) above, check and complete Either item 7a or 7b, whichever is applicable.)

7a. Request for recognition as Bargaining Representative was made on (Month, day, year) and Employer declined recognition on or about (Month, day year). (If no reply received, so state.)

3. Recognized or Certified Bargaining Agent:

None.

I declare that I have read the above petition and that the statements herein are true to the best of my knowledge and belief.

LOS ANGELES JOINT BOARD, AMALGAMATED CLOTHING WORKERS OF AMERICA, AFL-CIO,

/s/ GRISELDA KUHLMAN,
Organizer;

By (Miss) GRISELDA KUHLMAN,
(Signature of Representative or Person Filing
Petition.)

2501 S. Hill St.,
Los Angeles, Calif.

Wilfully False Statement on This Petition Can
Be Punished by Fine and Imprisonment (U. S.
Code, Title 18, Section 1001).

[Received in evidence April 29, 1957, as Gen-
eral Counsel's Exhibit No. 5-A.]

GENERAL COUNSEL'S EXHIBIT No. 5-D

United States of America
Before the National Labor Relations Board
Case No. 21-RC-4553

MOSS-AMBER CORPORATION,

Employer,

and

LOS ANGELES JOINT BOARD, AMALGA-
MATED CLOTHING WORKERS OF AMER-
ICA, AFL-CIO,

Petitioner.

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9 (c)
of the National Labor Relations Act, a hearing was
held before Irving Helbling, hearing officer.¹ The

¹The Employer's name appears herein as amended
at the hearing.

hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.²

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organization involved claims to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. The Petitioner seeks a unit consisting of spreaders and cutters at the Employer's plant at San Fernando, California, excluding all other production employees, shipping and office employees, maintenance employees, and supervisors as defined in the Act. The Employer asserts that the requested unit is inappropriate and contends that the appropriate unit should include, in addition to the em-

²The hearing officer properly rejected an offer of proof made by the Employer with respect to the voting eligibility of a cutter and spreader. An unfair labor practice charge alleging discharge because of union activities respecting this person has been filed with the Board, and it is the Board's customary practice to exclude from representation hearings all evidence relating to unfair labor practices. *Dichello, Incorporated*, 107 NLRB 1642, footnote 2, cf. *Desilu Productions, Inc.*, 106 NLRB 179; *Columbia Pictures Corporation, et al.*, 94 NLRB 466.

employees sought by the Petitioner, employees engaged in designing, spreading, cutting, and pattern-making at the Employer's other plant at Los Angeles, California. The parties further disagree as to the unit placement of certain categories at the San Fernando plant, which are discussed below.

The Employer, under the over-all direction of its president and its vice-president, is engaged in the manufacture and sale of sport shirts. Its San Fernando and Los Angeles plants are about 25 miles apart. At the former plant, which consists of a single large room and a partitioned-off space used as an office, the Employer is engaged primarily in production activities. The Employer's vice-president makes his headquarters at this plant, and supervises its approximately 100 employees. The employees include 1 full-time cutter,³ 2 spreaders, approximately 75 sewing machine operators and a forelady, 5 or 6 pressers, about 5 trimmers, 2 or 3 inspectors, 5 bundle girls, a machinist, and 1 or 2 janitors. At its Los Angeles plant, the Employer (1) maintains its principal office and its showroom; (2) designs, alters and repairs its products, and manufactures certain items, mostly samples; and (3) sells, folds, presses,⁴ boxes, and ships its products, including those made

³This cutter, who lives near Los Angeles, in addition to his full-time cutting, drives the Employer's truck and makes deliveries between the plants or his way to and from work.

⁴This is "finish-pressing," in contrast to the "under-pressing" done at the San Fernando plant

in San Fernando. The Employer keeps its books and its payroll records at its Los Angeles office, and its president has his headquarters at this plant. The approximately 25 employees include 5 office clericals, 6 or 7 folders, 3 pressers, 3 or 4 boxers, 3 or 4 shippers, a sewer, and 2 employees engaged in designing, spreading, cutting, and pattern-making. The Employer's vice-president supervises the 2 latter employees, in addition to the 100 employees at the San Fernando plant. All the above employees perform the usual duties of their classifications. So far as the record discloses, there is no employee interchange between the 2 plants and there is no history of collective bargaining at either.

Upon the entire record herein, and particularly in view of the geographical separation of the 2 plants, their different functions, the lack of employee interchange and bargaining history, and the fact that no labor organization currently seeks to represent employees at both plants, we find that a unit of employees limited to the San Fernando plant is appropriate.

It is clear from the record that the cutter and spreaders at the San Fernando plant are skilled employees, and that their jobs are, to some extent, complementary.⁵ The Board has found that spreaders and cutters in the garment industry, such as those involved herein, constitute a homogeneous group of skilled employees, with interests separate

⁵Until about September, each of these employees did both spreading and cutting.

and apart from other employees.⁶ We therefore find that the spreader and cutters at the San Fernando plant constitute an appropriate bargaining unit.

There remains for consideration the unit placement of the disputed categories at the San Fernando plant.

Bundle Girls:

The Employer would include, and the Petitioner would exclude, the bundle girls. The Board has found that, although bundle girls handle work done by spreaders and cutters, they clearly do not have the skills required of such employees, and that they do not have a community of interests with spreaders and cutters which would require their inclusion in a unit of these employees.⁷ We therefore exclude bundle girls from the unit.

The Patternmaker-Cutter:

The Employer would include the patternmaker-cutter. The Petitioner would exclude him as a supervisor. He spends about 75 per cent of his time in making patterns and markers. He also does spreading and cutting. He has hired at least one employee and appears to give orders and directions to other spreaders and cutters. In these circumstances, we find that the patternmaker-cutter is a

⁶Little Champ Manufacturers, Inc., 104 NLRB 985 at 990; Rothschild-Kaufman Co., Inc., 98 NLRB 353.

⁷Little Champ Manufacturers, Inc., *supra*.

supervisor as defined in the Act and exclude him from the unit.

Upon the entire record in this case, we find that the following employees of the Employer at its plant at San Fernando, California, constitute an appropriate unit within the meaning of Section 9 (b) of the Act: All spreaders and cutters, excluding all other production employees, shipping and office employees, maintenance employees, bundle girls, the patternmaker-cutter, and all other supervisors as defined in the Act.

Direction of Election

As part of the investigation to ascertain representatives for the purposes of collective bargaining with the Employer, an election by secret ballot shall be conducted as early as possible, but not later than 30 days from the date of this Direction, under the direction and supervision of the Regional Director for the Region in which this case was heard, and subject to Sections 102.61 and 102.62 of National Labor Relations Board Rules and Regulations, among the employees in the unit found appropriate in paragraph numbered 4, above, who were employed during the payroll period immediately preceding the date of this Direction of Election, including employees who did not work during said payroll period because they were ill or on vacation or temporarily laid off, and employees in the military services of the United States who appear in person at the polls, but excluding those employees who have since quit or been discharged for

cause and have not been rehired or reinstated prior to the date of the election, and also excluding employees on strike who are not entitled to reinstatement, to determine whether or not they desire to be represented, for purposes of collective bargaining, by Los Angeles Joint Board, Amalgamated Clothing Workers of America, AFL-CIO.

Dated: Washington, D. C., Dec. 31, 1956.

[Seal]

NATIONAL LABOR
RELATIONS BOARD,

BOYD LEEDOM,

Chairman,

ABE MURDOCK,

PHILIP RAY RODGERS,

STEPHEN S. BEAN,

Members.

[Received in evidence April 29, 1957, as General Counsel's Exhibit No. 5-D.]

RESPONDENT'S EXHIBIT No. 7

[Title of Board and Cause.]

EXCEPTIONS TO DECISION AND DIRECTION
OF ELECTION AND MOTION FOR
RECONSIDERATION

By telegram on January 3, 1957, notification was given by undersigned, acting in behalf of Moss-Amber Corporation, the Employer in the above-

entitled case, of intent to file Request for Reconsideration and Motion to Amend Decision and Direction of an Election. There follows the Employer's Exceptions to the Decision and Direction, argument sustaining the Employer's position thereto, and Motion to Reconsider and amend the Direction of Election.

Exceptions

Moss-Amber Corporation, hereinafter referred to as the "Employer," excepts to Board's Decision and Direction of Election in the following particulars:

1. (Paragraph 4, bottom of page one and top of page 2): "The Employer asserts that the requested unit is inappropriate and contends that the appropriate unit should include, in addition to the employees sought by the Petitioner, employees engaged in designing, spreading, cutting and pattern-making at the Employer's other plant at Los Angeles, California."

2. (Starting at 8th line from the bottom of page 2): "The approximately 25 employees include 5 office clericals, 6 or 7 folders, 3 pressers, 3 or four boxers, 3 or 4 shippers, a sewer, and 2 employees engaged in designing, spreading, cutting, and pattern-making."

3. (First paragraph, page 3): "Upon the entire record herein, and particularly in view of the geographical separation of the 2 plants, their different functions, the lack of employee interchange and bargaining history, and the fact that no labor or-

ganization currently seeks to represent employees at both plants, we find that a unit of employees limited to the San Fernando plant is appropriate."

4. (First paragraph, page 4): "Upon the entire record in this case, we find that the following employees of the Employer at its plant at San Fernando, California, constitute an appropriate unit within the meaning of Section 9 (b) of the Act: All spreaders and cutters, excluding all other production employees, shipping and office employees, maintenance employees, bundle girls, the pattern-maker-cutter, and all other supervisors as defined in the Act."

The Employer's Position With Respect to Above Exceptions

With reference to the first exception: The Employer does not seek to have designers included in the unit. There is nothing in the record wherein the Employer seeks a unit including designers. Testimony of the witness, Edward Moss, was to the effect that the Employer had but one designer, and that designer was Mr. Amber, president of the corporation. The record specifically states that the Employer does not seek to include Mr. Amber in the bargaining unit (p. 128 tr.). There is the possibility that the record is not entirely clear as to how many are engaged in designing and for that reason there follows a clarification.

Mr. Edward Moss, vice-president of the corporation, testified that he is in full charge of all produc-

tion and supervises all such activity, both at the San Fernando and Los Angeles locations. Mr. Moss testified (p. 17 tr.) that he had not previously given testimony "in Court." As a result of his inexperience, some of the answers he gave in response to questions were, inadvertently and not intentional, misleading. It is apparent Mr. Moss did not fully understand the scope of some of the questions.

(p. 14 tr.)

Q. (By Mr. Rissman, Union Counsel): How many are engaged in designing? (Referring to the Los Angeles location.)

A. (By Mr. Moss): Three; it varies, could be three, four, two.

(p. 15 tr.)

Q. How much was it of last week?

A. At the moment, there is three.

Q. Now, how many, if any, do cutting?

A. In the cutting, there is two.

Q. Who is in charge of the two who do the cutting? A. I am.

Q. We are talking now about the cutting that is done at the Los Angeles plant.

A. I supervise it.

Q. Who are those two people?

Further questioning developed the names of the two engaged in cutting at the Los Angeles location as Oscar Gallegos (p. 15 tr.) and Helen O'Brien (p. 21 tr.).

(p. 16 tr.)

Q. The designing is done by who?

A. Mr. Amber.

Q. Who are the other two in the designing department?

A. The answer I just gave you, one was Oscar and the other one I can't think of the name.

Q. I see; so Mr. Amber and Oscar Gallegos and one other man do designing and cutting?

A. Right.

Q. We have really only three people instead of five doing those operations; is that correct?

A. At the moment.

(p. 21 tr.)

Q. (By Mr. Rissman): Will you describe for us the work done by Oscar Gallegos and Helen O'Brien, and if their work is different, then describe each one separately?

A. Well, they integrate their work. They cut samples and they cut trim and collars and so on and so forth, whatever I send them to do, they do.

Q. In other words, you send the work to them from San Fernando? A. Yes.

Q. Do they do any marking?

A. What do you mean, marking; by that do you mean marking the patterns?

Q. Yes.

A. Well, Oscar makes some patterns and Helen does, too.

Q. Do they do any spreading?

A. They have to spread to cut.

From the foregoing testimony it could have been understood that there were three people engaged in designing. The Board's Direction reflects such an understanding. Mr. Moss enumerated the people in the department as three, or meant to do so, and a break-down of the duties clearly reveals that only one, Mr. Amber, does designing, and the other two, Gallegos and O'Brien, perform the usual functions of cutters in a garment factory, which includes pattern-making, spreading and cutting. (See the sworn statement of Mr. Moss attached hereto and made a part hereof, and identified as Exhibit 1.)

The Employer submits that Gallegos and O'Brien perform duties similar to the duties of the San Fernando employees and, further, that such duties are so integrated with the work at the San Fernando location, and with the cutting department there, that they are inseparable when considered as a unit, and that they should be included in any designation of an appropriate bargaining unit of cutters employed by the Employer. In support of this contention, the Employer calls attention to the following testimony:

(p. 55 tr.)

Q. (By Hearing Officer): What about the cutting that is performed in Los Angeles, do they perform any production cutting?

A. (By Mr. Moss): Yes. Well, when I say production, I should limit it to trim cutting, primarily, although they do some production cutting.

Q. By trim, do you mean collars and cuffs?

A. Collars and panels and other parts of the garment.

Q. I see, and those parts then would be shipped to San Fernando to be incorporated in the finished garment?

A. That's right.

From the above testimony, together with the sworn statement of Mr. Moss, there can be no doubt but that the work of the cutters in San Fernando and Los Angeles constitutes a single homogeneous unit. Neither location operates unilaterally; both cut part of the same garments manufactured for production; both are under the same supervision with direct telephone service between the two locations; the same materials and the identical garments are worked on at both places at various stages; the company records classify them as a single department (see Mr. Moss' sworn statement); all are on an hourly wage and enjoy the same vacation benefits; all are eligible for membership in the Petitioning Union (refer to testimony of Union Agent George Metalsky, p. 111 tr.) where eligibility is stated to be: "Anybody in the clothing industry that is a cutter."

Moss-Amber Corporation does not operate as two businesses under a single ownership, but as one integrated production unit with two locations. It has, in fact, one cutting department, operated partially at San Fernando and partially at Los Angeles for the sake of convenience only. Trim (which includes "collars and panels and other parts of the garment") is cut in larger proportion in the Los An-

geles location. However, trim is cut also in San Fernando. (See testimony of Mr. Moss, p. 30 tr., wherein he testified Aldo Baldwin at the San Fernando location cut "just trim.") On the other hand, the greater part, but not all, of the cutting of larger pieces, or what Mr. Moss termed "production cutting" is performed at the San Fernando location. Samples are cut and made at both locations.

It is difficult to envision an operation so closely integrated having a bargaining representative for some of its employees in a single department, but excluding other employees in the same department for no other reason than that their cutting tables happen to be separated by 25 miles. It is the contention of the Employer that all of its cutters should be entitled to bargaining representation, if any should be designated, and that a separation would provoke an unworkable and inefficient department. Mr. Moss, who is the supervisor of the entire cutting department, has discretionary authority to assign the work at either location and does so in manner to obtain the greatest efficiency and best utilize the time of the cutters.

The Employer cannot accept the Board's ruling of what constitutes an appropriate bargaining unit as tenable, and submits that it would create problems that would necessitate a change of production methods forcing it to do all the cutting in one location, either at San Fernando or Los Angeles. It submits further, that any insistence of a division of the employees, who have a community of interest and whose work largely complements one another,

could only be considered an arbitrary and capricious ruling, and the Employer would have no alternative but to seek relief from such a ruling in whatever manner is provided by law.

Motion to Reconsider and Amend Direction
for an Election

The Employer accepts the Board's ruling with respect to excluding the bundling girls who work in the cutting department, as well as the exclusion of the patternmaker-cutter at the San Fernando location who, the Board rules, is a supervisory employee.

The Employer moves to amend the Direction of an Election to include in one homogeneous group of skilled employees all spreaders and cutters employed by the Employer at its San Fernando and Los Angeles locations, and agrees that if that is done the unit then so designated will in fact constitute an appropriate unit within the meaning of Section 9 (b) of the Act.

Respectfully submitted,

/s/ MRS. EDWIN SELVIN,

MRS. EDWIN SELVIN,

For and in Behalf of Moss-
Amber Corporation.

Signed at Beverly Hills, Calif., this 19th day of January, 1957.

[Received in evidence April 29, 1957, as Respondent's Exhibit No. 7.]

RESPONDENT'S EXHIBIT No. 8

AFFIDAVIT

State of California,
County of Los Angeles—ss.

I, Edward Moss, being first duly sworn, do depose and state:

I am the same Edward Moss who gave testimony in the representation proceedings, titled 21-RC-553, Moss-Amber Corporation, before a hearing officer in the Regional Office of the National Labor Relations Board on October 1, 1956. In an effort to clarify the record I make the following statement:

I did not intend by my testimony to say that three people were, on the day of the hearing, engaged in designing in the Los Angeles location of our plant. I merely meant that three people were, on the date of such testimony, employed in what is sometimes loosely termed "the designing department," but which is actually part of our cutting department (p. 14 tr.). This, I believe, is made clear by my further testimony (p. 16 tr.) where I identified Mr. Amber as the Designer, while the specific duties of Oscar Gallegos and Helen O'Brien are detailed (p. 1 tr.) as follows: "Well, they integrate their work. They cut samples and they cut trims and collars and so on and so forth, whatever I send them to do, they do." Neither has ever engaged in designing for Moss-Amber Corporation. I again correctly stated what these two employees do, and again, to clarify, I stated (p. 55 tr.) specifically

that they both cut for production, but that such production cutting is primarily limited to trim cutting, although this is not always the case, as indicated by the testimony. I defined trim as "collars and panels and other parts of the garment," and testified further that after they were cut such parts are shipped to the San Fernando location to be incorporated into the finished garment. I was not asked the question and so I did not testify to the further fact that approximately 60% of all the trim incorporated in the garments manufactured for production is cut by the cutting department employees in Los Angeles.

During the term of employment of Aldo Baldwin at the San Fernando location I testified (p. 30 tr.) that he was cutting "just trim," and that he was employed (pgs. 70 and 71 tr.) to help out during the vacation of regularly employed cutters.

The record is abundantly clear that the two locations, San Fernando and Los Angeles, are not two business operated under one ownership, but one business operated as a single integrated unit, and occupying two locations only for convenience. In the case of the cutting department it is a single department, partly in San Fernando and partly in Los Angeles. I testified that all accounting and payroll records are kept in Los Angeles. Payroll records are segregated by departments and San Fernando cutters and Los Angeles cutters are segregated together from the other classifications as one department, as our payroll records will reveal.

The actual work done in each location, insofar as cutting operations are concerned, is so integrated that while San Fernando may cut fronts, backs, sleeves, etc., Los Angeles will cut, trim collars, panels, etc., for the self-same garments which are manufactured for production. The reason, and the only reason, for confining the larger part of the trim to the Los Angeles location, is that trim cutting (pgs. 70 and 71 tr.) requires less space than is required for other parts of the garment, and since we have less cutting space in Los Angeles it is a matter of convenience only. Other than samples, which are made at both locations, it is safe to say that most of the garments manufactured for production have some work performed by the cutters in San Fernando and some by the cutters in Los Angeles. There are no garments manufactured for production made wholly and completely at either location. It requires both locations to complete each and every garment manufactured for production, and this is particularly true of the cutting operation.

As I testified, I supervise all cutting operations. There is direct telephone service between the San Fernando cutting department and the Los Angeles cutting department to facilitate this. There is also a truck goes back and forth taking materials from one cutting department to another. The work of the two locations is quite thoroughly intermingled. The work at both locations could just as well be consolidated in a single building, or a single room for

that matter, and the end result would be the same. Many factors have entered into the division of the work into two locations or two buildings to effectuate a single production unit, such as availability of certain types of employees, shipping centers, showroom facilities close to markets, space requirements involving overhead, and many others. But the fact remains that there is but one cutting department, part of the tables being located in San Fernando and part in Los Angeles, and only limitation of space determining which part of the garment is cut in San Fernando and which is cut in Los Angeles. If there were to be an elimination of the functions of either of the two locations, as at present operated, there could be no production whatever, since the work at the two locations is so closely integrated.

There is the further fact that the Union has been and is, attempting to enlist as members the employees in the Los Angeles location of the cutting department. Union organizers have entered the premises of the Los Angeles location and have solicited our cutters employed there to become members—with what success I do not know. This has occurred on several occasions since the inception of this proceeding and prior to the Board's Decision and Direction of Election. I personally have seen cards for membership signature which were handed out on our premises in Los Angeles.

Finally, there is no significance whatsoever in the fact that there is no interchange of employees be-

tween San Fernando and Los Angeles. There are cutting facilities at both locations. The work can be done either place, and it is done in either place as I assign it in manner to keep the cutters at both locations busy. Naturally, the assignments are made with space limitations (the smaller cutting area specifically) in Los Angeles, which results in the greater portion of the larger pieces, requiring more space, being cut in San Fernando, and the trim, requiring less space, being made in larger proportion in Los Angeles.

/s/ EDWARD MOSS.

Subscribed and sworn to this 18th day of January, 1957, before me, a Notary Public in and for the State of California, County of Los Angeles.

[Seal] /s/ GLADYS W. TUCKER.

My Commission Expires August 5, 1960.

[Received in evidence April 29, 1957, as Respondent's Exhibit No. 8.]

GENERAL COUNSEL'S EXHIBIT No. 5-8

United States of America
National Labor Relations Board

[Title of Cause.]

“Non D”

Type of Election: Board Ordered.

CERTIFICATION OF REPRESENTATIVES

An election having been conducted in the above matter by the undersigned Regional Director of the

National Labor Relations Board in accordance with the Rules and Regulations of the Board; and it appearing from the Tally of Ballots that a collective bargaining representative has been selected; and no objections having been filed to the Tally of Ballots furnished to the parties, or to the conduct of the election, within the time provided therefor;

Pursuant to authority vested in the undersigned by the National Labor Relations Board,

It Is Hereby Certified that Los Angeles Joint Board, Amalgamated Clothing Workers of America, AFL-CIO, has been designated and selected by a majority of the employees of the above-named Employer, in the unit herein involved, as their representative for the purposes of collective bargaining, and that, pursuant to Section 9 (a) of the Act as amended, the said organization is the exclusive representative of all the employees in such unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

Signed at Los Angeles, California, on the 11th day of February, 1957.

On behalf of,

[Seal]

NATIONAL LABOR
RELATIONS BOARD,

/s/ HENRY W. BECKER,

Regional Director for Twenty-first Region, National
Labor Relations Board.

Received in evidence April 29, 1957, as General
Counsel's Exhibit No. 5-H.

United States of America
Before the National Labor Relations Board
Case No. 21-CA-2657

MOSS-AMBER MFG. CO.

and

LOS ANGELES JOINT BOARD, AMALGA-
MATED CLOTHING WORKERS OF
AMERICA, AFL-CIO

DECISION AND ORDER

On May 21, 1957, Trial Examiner David F. Doyle issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed.¹ The rulings are

¹On the ground that the Respondent could not relitigate in this proceeding issues which had been decided in the prior representation proceeding, 116

hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

Upon the entire record in the case and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Moss-Amber Mfg. Co., San Fernando, California, its officers, agents, successors, and assigns, shall:

NLRB 1998, the Trial Examiner at the hearing herein excluded, *inter alia*, certain evidence which the Respondent asserts was newly discovered and therefore admissible. The Respondent further asserts that such evidence, pertaining to alleged efforts by the Union to organize employees in addition to those included in the appropriate unit, would establish that such unit was inappropriate under Section 9 (c) (5) of the Act because it was based on the Union's extent of organization. Section 9 (c) (5), however, precludes the Board only from giving controlling weight to extent of organization, and the findings made in the representation case show that the Board's unit determination in that case was affirmatively supported by clear and decisive evidence wholly unrelated to extent of organization. In these circumstances, the allegedly newly discovered evidence, even if admitted, would not affect the validity of the Board's unit determination in the representation proceeding or our agreement therewith. See *The Employers' Liability Assurance Corporation, Ltd.*, 117 NLRB 92; *Kwikset Locks, Inc.*, 116 NLRB 1648. Accordingly, the Trial Examiner's ruling, even if assumed to be erroneous, was not prejudicial.

1. Cease and Desist From:

(a) Refusing to bargain collectively with the Los Angeles Joint Board, Amalgamated Clothing Workers of America, AFL-CIO, as the exclusive representative of all spreaders and cutters employed by the Respondent at its San Fernando, California, plant, excluding all other production employees, shipping and office employees, maintenance employees, bundle girls, the patternmaker-cutter, and all other supervisors as defined in the Act;

(b) In any other manner interfering with the efforts of the Los Angeles Joint Board, Amalgamated Clothing Workers of America, AFL-CIO, to bargain collectively with it in behalf of the employees in the appropriate unit.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request bargain collectively with the Los Angeles Joint Board, Amalgamated Clothing Workers of America, AFL-CIO, as the exclusive bargaining representative of all the employees in the appropriate unit with respect to wages, rates of pay, hours of employment, or other conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement;

(b) Post at its plant in San Fernando, California, copies of the notice attached hereto, marked

Dated:

By.....,
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

[Title of Board and Cause.]

INTERMEDIATE REPORT AND RECOMMENDED ORDER

David F. Doyle, Trial Examiner.

Statement of the Case

This proceeding, brought under Section 10 (b) of the Act, was heard at Los Angeles, California, on April 29, 1957, pursuant to due notice to all parties.¹ The complaint, dated April 1, 1957, was issued by the General Counsel and duly served on the Company. The complaint alleged in substance that the Company on or about February 15, 1957, and thereafter, refused to bargain collectively with the Union,

¹In this report, Moss Amber Mfg. Co. is referred to as the Company; Los Angeles Joint Board, Amalgamated Clothing Workers of America, AFL-CIO, as the Union; the General Counsel of the Board and his representative at the hearing, as the General Counsel; the National Labor Relations Board, as the Board; and the Labor Management Relations Act of 1947, as amended, as the Act.

which was the certified bargaining representative of the Company's employees in an appropriate unit, and that by such conduct the Company had violated Sections 8 (a) (1) and (5) of the Act. The Company duly filed an answer denying the commission of the alleged unfair labor practices, and asserting as a defense that the bargaining unit defined by the Board in its Decision and Direction of Election in a representation case between the parties (Moss-Amber Mfg. Co., 116 NLRB No. 286) was in fact inappropriate, and that the Board's finding as to unit was "illegal and contrary to the express provisions of the Act."

At the hearing all parties were represented, were afforded a full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence bearing on the issues, to argue the issues orally upon the record, and to file briefs and proposed findings.

Upon the entire record in the case, and from my observation of the witnesses, I make the following:

Findings of Fact

I. The Business of the Company

Upon the pleadings, and a stipulation made at the hearing as to certain facts of the Company's business, I find that the Company is a California corporation engaged in San Fernando and Los Angeles, California, in the manufacture of men's sport shirts. The Company annually ships directly to

points located outside the State of California products valued in excess of \$50,000.

Upon all the evidence, including that produced in the prior representation case between the parties, *supra*, of which I hereby take judicial notice, I find that the Company is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

II. The Labor Organization Involved.

Upon all the evidence, I find that Los Angeles Joint Board, Amalgamated Clothing Workers of America, AFL-CIO, is a labor organization admitting to membership employees of the Company.

III. The Unfair Labor Practices

A. Introduction: the Representation Proceeding

The sole issue in the instant proceeding is whether the Company has refused to bargain collectively with the Union and has thereby violated Section 8 (a) (1) and (5) of the Act.

As well be seen below, the Company asserts as a defense to its refusal to bargain, the contention that the unit has found by the Board in its Decision and Direction of Election in *Moss Amber Corporation and Los Angeles Joint Board, Amalgamated Clothing Workers of America, AFL-CIO*, 116 NLRB No. 286, is not appropriate, and that, in consequence, the Company was under no duty to bargain with the Union. A short review of the representation proceeding will demonstrate that the contentions of

the Company on the unit issue have been heard and determined by the Board in that proceeding.

On September 5, 1956, the Union filed a petition requesting certification of representative for a unit of the Company's employees at its San Fernando plant described as, "all cutters," excluding specifically all other production employees, shipping and office employees, maintenance employees, and supervisory employees, as defined in the Act. Pursuant to notice, a representation proceeding was conducted before a hearing officer at Los Angeles, California, on October 1, 1956. A full opportunity was afforded all parties to present evidence. At the hearing, the Company assumed the position that: (1) The proposed unit was inappropriate because it did not include employees working for the Company at its Los Angeles plant which, according to the testimony of the Company's witnesses, was integrated with the San Fernando plant; and (2) that the unit of employees at the San Fernando plant should include bundle girls, the patternmaker-cutter, and others.

On December 31, 1956, the Board issued its Decision and Direction of Election in the representation case finding that the following employees of the Company at its plant at San Fernando, California, constituted an appropriate unit within the meaning of Section 9 (b) of the Act: All spreaders and cutters, excluding all other production employees, shipping and office employees, maintenance employees, bundle girls, the patternmaker-cutter, and all other supervisors as defined in the Act.

On January 30, 1957, pursuant to the Direction of Election, an election by secret ballot was conducted under the supervision of the Regional Director of the Twenty-first Region. Of the three voters eligible to vote in the election, two voted in favor of the Union. On February 11, 1957, the Regional Director issued to the Union a certification of representative covering the unit.

B. The Refusal to Bargain

After the Union had received its certification, on February 12, 1957, Jerome Posner, its manager, by letter notified the Company that it had received its certification and that it would like to arrange a meeting with a representative of the Company for the purpose of engaging in collective bargaining.

On February 15, 1957, Mrs. Edwin Selvin replied to Posner's letter of February 12, 1957. Mrs. Selvin's letter reads as follows:²

Dear Sir:

Your certified mail, special delivery letter, addressed to Mr. Edward Moss of Moss-Amber Corporation, has been forwarded to me for reply.

As you are aware, we made formal objection to the Board's ruling as to the appropriate bargaining unit of employees. We did not participate in the election, nor allow it to be held on company premises, nor did we post the notices of such election. Nor will we now recognize the certification issued as a

²General Counsel's Exhibit No. 4.

result of the election held outside the company's plant.

This action is taken pursuant to Section 10 (f) of the National Labor Relations Act, which section provides the means by which our objections may be reviewed by a United States Circuit Court or by the United States Court of Appeals. When and if a 'final Order of the Board' issues, after hearing of our refusal to bargain, it is our intention to invoke this right of a Court review of our objections.

In the meantime, you may consider this letter refusal to meet and discuss any terms of a contract.

Yours truly,

On February 20, 1957, the Union filed the instant charge against the Company. At the hearing, the Company assumed the position that it sought a review of the Board's decision on the question of appropriate unit by the Board and the Courts, and that its refusal to bargain was the procedure required to raise that question. Counsel for the Company also sought to introduce into evidence certain exhibits, and proffered certain testimony, bearing on certain phases of the question of appropriate unit. The General Counsel objected to the receipt in evidence of these exhibits, and the testimony of these witnesses proposed by the Company, on the ground that the exhibits and testimony all related to issues in the representation proceeding, which had been litigated, and that the Company was trying to use the present proceeding to relitigate matters

which were res adjudicata. The Trial Examiner sustained the objection of the General Counsel, on the ground that it has long been the policy of the Board not to permit a respondent to relitigate, in a subsequent unfair labor practice proceeding involving charges of a refusal to bargain with a certified representative, the issues decided in a prior representation proceeding.³

In consequence of the rejection of these exhibits⁴ and the preclusion of this testimony, no further defense was interposed by the Company.

Therefore, upon the evidence as a whole, I find that on or about February 15, 1957, and at all times thereafter, the Company has refused, and is refusing, to bargain collective with the Union as the exclusive representative of its employees in an appropriate unit, and has thereby interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

³*N. L. R. B. v. Worcester Woolen Mills Corp.*, 170 F. 2d 13 (C.A. 1) cert. denied 336 U. S. 903; *Pittsburgh Plate Glass Co. v. N. L. R. B.*, 313 U. S. 146; *Allis-Chalmers Manufacturing Co. v. N. L. R. B.* 162 F. 2d 435 (C.A. 7); *N. L. R. B. v. West Kentucky Coal Company*, 152 F. 2d 198 (C.A. 6) cert. denied 328 U. S. 866; *N. L. R. B. v. Anwelt Shoe Manufacturing Co.*, 93 F. 2d 367 (C.A. 1).

⁴The rejected exhibits were marked for identification, Respondent's Exhibits Nos. 1-6. They may be found in the file of Rejected Exhibits. In that connection see transcript of testimony, pages 28-31. See also, testimony of Griselda Kuhlman, page 25, and Edward Moss, page 40, as to testimony ruled inadmissible.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of the Company set forth in Section III above, occurring in connection with the operations of the Company described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that the Company has engaged in certain unfair labor practices, it will be recommended that the Company cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having also found that the Union represented, and now represents, a majority of the employees in the appropriate unit, and that the Company has refused to bargain collectively with it, the undersigned will recommend that the Company upon request bargain collectively with the Union.

Upon the basis of the above findings of fact and upon the entire record in the case, the undersigned makes the following:

Conclusions of Law

1. Los Angeles Joint Board, Amalgamated Clothing Workers of America, AFL-CIO, is a labor or-

ganization within the meaning of Section 2 (5) of the Act.

2. All spreaders and cutters employed by the Company at its San Fernando plant, excluding all other production employees, shipping and office employees, maintenance employees, bundle girls, the patternmaker-cutter and all other supervisors as defined in the Act, form a unit appropriate for the purposes of collective bargaining.

3. The above-named Union was on February 11, 1956, and at all times thereafter has been and is, the exclusive representative of all the employees in the aforesaid unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By refusing on February 15, 1957, and at all times thereafter to bargain collectively with the Union as the exclusive representative of all its employees in the aforesaid appropriate unit, the Company has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8 (a) (5) of the Act, as amended.

5. By the aforesaid refusal to bargain, the Company has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, and has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8 (a) (1) of the Act, as amended.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

Recommendations

Upon the basis of the above findings of fact and conclusions of law, and upon the entire record in the case, the undersigned recommends that the Respondent, Moss Amber Mfg. Co., its officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with the Los Angeles Joint Board, Amalgamated Clothing Workers of America, AFL-CIO, as the exclusive representative of all spreaders and cutters employed by the Company at its San Fernando plant, excluding all other production employees, shipping and office employees, maintenance employees, bundle girls, the patternmaker-cutter and all other supervisors as defined in the Act;

(b) In any other manner interfering with the efforts of the Los Angeles Joint Board, Amalgamated Clothing Workers of America, AFL-CIO, to bargain collectively with it in behalf of the employees in the aforesaid appropriate unit.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Upon request bargain collectively with the Los Angeles Joint Board, Amalgamated Clothing Workers of America, AFL-CIO, as the exclusive bargaining representative of all the employees in

the aforesaid appropriate unit with respect to wages, rates of pay, hours of employment, or other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement;

(b) Post at its plant in San Fernando, California, copies of the notice attached hereto, marked Appendix A. Copies of said notice, to be furnished by the Regional Director for the Twenty-first Region, shall, after being duly signed by the Company's representative, be posted by the Company immediately upon receipt thereof and maintained by it for a period of sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Company to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Twenty-first Region in writing within twenty (20) days from the date of receipt of this Intermediate Report and Recommended Order what steps the Company has taken to comply herewith.

It is further recommended that, unless on or before twenty (20) days from the date of receipt of this Intermediate Report and Recommended Order the Company notify the said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board

issue an order requiring the Company to take the action aforesaid.

Dated this 21st day of May, 1957.

/s/ DAVID F. DOYLE,
Trial Examiner.

[Title of Board and Cause.]

EXCEPTIONS TO INTERMEDIATE REPORT,
RECOMMENDED ORDER AND TO VARI-
OUS RULINGS OF THE TRIAL EX-
AMINER

Comes now the Respondent and notes the follow-
ing exceptions to the Intermediate Report, Recom-
mended Order and Rulings of the Trial Examiner:

I.

Respondent excepts to the findings in the Inter-
mediate Report, page 1, lines 3 and 4, from the bot-
tom thereof that: The parties "were afforded a full
opportunity to be heard, to examine and cross-ex-
amine witnesses, to introduce evidence bearing on
the issues," and in this connection alleges it was
precluded from offering evidence material to the
issues, and was denied due process by the Trial Ex-
aminer's rulings.

II.

Respondent excepts to the finding page 2, lines
23 to 25, that: "Upon all the evidence I find that
Los Angeles Joint Board, Amalgamated Clothing

Workers of America, AFL-CIO, is a labor organization admitting to membership employees of the Company.”

III.

Respondent excepts to the finding, page 2 of the Intermediate Report, lines 40 to 44, that: “A short review of the representation proceeding will demonstrate that the contentions of the company on the unit issue have been heard and determined by the Board in that proceeding.”

IV.

Respondent excepts to the finding, page 4 of the Intermediate Report appearing at lines 17 through 23, that the company refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit, and thereby interfered with the exercise of rights guaranteed in Section 7 of the Act.

V.

Respondent excepts to all conclusions of law set forth in said Intermediate Report, page 5, lines 1 through 33.

VI.

Respondent excepts to the Trial Examiner’s denial of Respondent’s motion to dismiss, pages 22-23, Rep. Tr.

VII.

Respondent excepts to the Trial Examiner’s statement, page 27, lines 13 and 14, Rep. Tr.: “Now, I do not know of any evidence I might take that would show that the unit was inappropriate.”

VIII.

Respondent excepts to the Trial Examiner's exclusion of evidence to the effect that the charging Union was attempting to organize other employees, including operators, bundlers, and all others at the San Fernando Plant, as well as the cutters at the Los Angeles Plant, and that the above employees were all eligible for membership in the charging Union. Rep. Tr. page 29, lines 2 through 15; page 30, lines 9 to 11.

IX.

Respondent excepts to the Trial Examiner's exclusion of evidence to the effect that before and after the original petition was signed the charging Union was attempting to organize not only cutters but operators and all classifications of employees in the employer's plants, both in Los Angeles and San Fernando, Rep. Tr., page 32, lines 22 to 24.

X.

Respondent excepts to the Trial Examiner's exclusion of evidence to the effect that the charging Union passed out organizational leaflets to all employees at the San Fernando Plant, and not to cutters and spreaders alone, prior to the date when it filed the original petition for certification; that said Union passed out organizing leaflets and authorization cards to employees at the Los Angeles Plant of Respondent prior to the direction of election; that the charging Union passed out organizing leaflets and authorization cards to all employees at Respondent's San Fernando Plant during April of

in *Allis Chalmers Mfg. Co. v. NLRB*, 162 F. 2nd, 435, when it stated: "There was no claim that the testimony thus proposed to be introduced was newly discovered testimony not available or known to petitioner at the time of the representation hearing." In the instant case such claim was made by the Respondent. (See Rep. Tr., pg. 34, lines 23 to 26; pg. 35, lines 1 to 3; pg. 36, lines 7 and 8.)

In view of the foregoing, it is submitted that the rulings of the Trial Examiner excluding such evidence was error, and the Respondent was thereby denied a fair hearing.

Prior to 1947 the Board in some instances had found a bargaining unit appropriate upon the basis of the extent to which the employees had organized. The Act was then amended by Congress, and Section 9 (c) (5) was added which reads as follows:

"In determining whether a unit is appropriate for the purposes specified in subsection (b) the extent to which the employees have organized shall not be controlling." It was to this provision that Respondent alluded when it stated in its answer that the bargaining unit claimed was illegal and contrary to the express provisions of the Act. It is Respondent's contention that inevitably under the procedure followed by the charging Union, the extent to which the employees organized became controlling in the determination of the bargaining unit. The charging Union, although it admits to member-

ship all production employees employed by Respondent and historically has organized along industrial rather than craft lines, filed a petition requesting a unit comprising only a small class of Respondent's employees. No disclosure was made of the fact that prior to that time the petitioning Union had attempted to organize the other employees of Respondent, although this was a fact peculiarly within the knowledge of said Union. Under the circumstances what basis other than the extent of organization could exist for the claiming of such a unit? It would seem that the Board, charged with the Congressional mandate quoted above, should have made some inquiry or investigation into the reason for the filing of the petition in the instant case. Corroborative of the fact that extent of organization was controlling in the filing of the petition is the further efforts of the charging Union during and since the Board's consideration of the unit question to organize other employees of the Respondent. It seems clear that the Congressional intent was to prevent piece-meal organization of an employer such as the Respondent, with its resultant inconvenience, expense and duplication of effort by employer and Board. If the charging Union continues to follow its present procedure, then we could expect petitions from the charging Union for bundlers, operators, shippers and pressers as each in turn might organize.

Ironically, one of the reasons advanced by the Board for finding the unit appropriate in the rep-

resentation case was "the fact that no labor organization currently seeks to represent employees at both plants." But for the Trial Examiner's exclusion of evidence the record in this case would show that the charging Union was seeking that very thing when the decision issued. Certainly there should have been disclosure by the charging Union at that time of its own efforts contrary to the Board's finding.

It is submitted that the amendment to the Act set out above in effect removes the determination of a bargaining unit from the Board's jurisdiction when extent of organization is the controlling factor. It is fundamental that a lack of jurisdiction may be urged at any time and at any stage of a quasi-judicial or judicial proceeding. It is therefore respectfully submitted that the record fails to disclose the commission of any unfair labor practices.

Respondent therefore prays that the complaint be dismissed.

Respectfully submitted,

/s/ FRANK A. MOURITSEN,
For Respondent Company.

Affidavit of Service by Mail attached.

Received June 13, 1957.

GENERAL COUNSEL'S EXHIBIT No. 5-I

Before the National Labor Relations Board
Twenty-first Region

Case No. 21-RC-4553

In the Matter of:

MOSS AMBER,

Employer,

and

LOS ANGELES JOINT BOARD, AMALGA-
MATED CLOTHING WORKERS OF
AMERICA, AFL-CIO,

Petitioner.

Monday, October 1, 1956

Pursuant to notice, the above-entitled matter came
on for hearing at 10:00 o'clock a.m.

Before: Irving Lebling, Hearing Officer.

Appearances:

MRS. EDWIN SELVIN,

Appearing on Behalf of Moss Amber, the
Employer.

WIRIN, RISSMAN AND OKRAND, by
ROBERT R. RISSMAN,

Appearing on Behalf of Los Angeles Joint
Board, Amalgamated Clothing Workers
of America, AFL-CIO, the Petitioner.

MISS GRISELDA KUHLMAN,

Appearing on Behalf of the Los Angeles
Joint Board, Amalgamated Clothing
Workers of America, AFL-CIO, the Pe-
titioner.

* * *

Hearing Officer: At this time, I would like to propose a few stipulations which I believe we can enter into.

First, may it be stipulated that the petitioner, the Los Angeles Joint Board of Amalgamated Clothing Workers of America, AFL-CIO, is a labor organization within the meaning of the National Labor Relations Act?

Mrs. Selvin: So stipulated.

Mr. Rissman: So stipulated.

Hearing Officer: May it also be stipulated that the company will not recognize the petitioner as the collective bargaining representative of certain of its employees unless, and until it is certified by the National Labor Relations Board?

Mrs. Selvin: So stipulated.

Mr. Rissman: So stipulated.

Hearing Officer: May it also be stipulated that the employer here involved, Moss Amber, is engaged in the manufacture of men's sportswear, that during the preceding 12-month period it shipped to points outside the State of California, having a value in excess of \$50,000.00?

Mrs. Selvin: So stipulated. [7*]

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

Mr. Rissman: So stipulated. [8]

* * *

EDWARD MOSS

a witness called by and on behalf of the Petitioner,
being first duly sworn, was examined and testified
as follows:

Direct Examination

By Mr. Rissman:

Q. Will you state your full name?

A. Edward Moss.

Q. What is your business, Mr. Moss?

A. Manufacturer of sport shirts.

Q. Are you an officer of the Moss-Amber Cor-
poration? A. I am. [9]

Q. What office do you hold?

A. Vice president.

* * *

Q. Are you actively engaged in the running of
the business? A. Yes.

Q. Where is your plant located?

A. We have two plants, one in Los Angeles and
one in San Fernando.

Q. Where is the Los Angeles plant located?

A. 1626 South Wall.

Q. What operations are carried on at the Los
Angeles plant?

A. Well, we have several operations, primarily
at the office [10] and showroom, pressing, folding,
cutting, making samples, we have an integrated op-
eration with the San Fernando plant.

(Testimony of Edward Moss.)

Q. You do any sewing operations at the Los Angeles plant? A. Yes.

Q. Just samples or for production?

A. Primarily samples. In case we have to make a few garments, we make them.

Q. But your normal production—

A. Our normal production is samples, repairs and altering in Los Angeles.

Q. But your normal sewing of shirts, other than what you have just described is done at the San Fernando plant? A. The majority, yes.

Q. Where is the San Fernando plant located?

A. 1825 First Street, San Fernando.

Mr. Rissman: May it be stipulated that the plant at 1825 First Street, San Fernando, California, is the one involved in this proceeding?

Mrs. Selvin: We will not so stipulate. We believe the employees of this employer are located in—we believe the employees of either one of the plants of this employer are entirely participating in this election.

Mr. Rissman: Mrs. Selvin, so that we understand your position, is it the company's position that the appropriate unit shall include the employees of both the San Fernando [11] plant as well as the Los Angeles plant?

Mrs. Selvin: Where there are employees in the unit, whether it is—we believe that where there are employees that perform the duties for this company at the downtown plant, it is this integrated opera-

(Testimony of Edward Moss.)

tion, and the privilege and opportunity of voting in the election.

Mr. Rissman: All right.

Q. (By Mr. Rissman): Where do you make your principal place of business, San Fernando?

A. San Fernando.

Q. How much time do you spend there each week?

A. Considerable.

Q. Well, assuming the factory works 40 hours a week, how much time do you spend there?

A. Fifty.

Q. How many employees do you have in the Los Angeles office? [12]

* * *

The Witness: I can only answer approximately, I don't know exactly how many people. I assume that there is possibly 30.

Q. (By Mr. Rissman): Approximately 30?

A. Yes.

Q. Now, as vice president of the corporation, are you its principal administrative officer?

A. I share all duties with Mr. Amber.

Q. Where does Mr. Amber make his headquarters?

A. 1626 South Wall.

Q. That is the Los Angeles office?

A. Yes.

Q. Of these approximately 30 people, how many are office workers?

A. I believe there is five.

Q. How many sales people?

A. No salesmen are included in it.

Q. How many are engaged in designing?

(Testimony of Edward Moss.)

A. Three; it varies, could be three, four, [14] two.

Q. How much was it as of last week?

A. At the moment, there is three.

Q. Now, how many, if any, do cutting?

A. In the cutting, there is two.

Q. Who is in charge of the two who do the cutting? A. I am.

Q. We are talking now about the cutting that is done at the Los Angeles plant?

A. I supervise it.

Q. Who are those two people?

Mrs. Selvin: I object to that question, Mr. Hearing Officer. The number of people is proper issue to bring before the Board, but by name, they should be brought into the hearing, I believe that cannot be material.

Hearing Officer: Overruled.

The Witness: You want me now to give you the name of the two people?

Q. (By Mr. Rissman): Yes.

A. That are in the cutting?

Q. At Los Angeles.

A. At Los Angeles, one is Oscar G-a-l-l-e-g-o-s, Gallegos.

Q. Who is the other? A. What?

Q. Who is the other?

A. The other is—I can't think of the name at the moment, [15] but it will come to me. I didn't come prepared with all names.

(Testimony of Edward Moss.)

Hearing Officer: All right. Well, if it comes to you, Mr. Moss, let us know.

Q. (By Mr. Rissman): If you have any papers or records in your pocket or briefcase or in the hearing room, feel free to refer to them.

A. I didn't bring any.

Mrs. Selvin: I did not request him to bring any names.

Q. (By Mr. Rissman): The designing is done by who? A. Mr. Amber.

Q. Who are the other two in the designing department?

A. The answer I just gave you; one was Oscar and the other one I can't think of the name.

Q. I see; so Mr. Amber and Oscar Gallegos and one other man do designing and cutting?

A. Right.

Q. We have really only three people instead of five doing those operations; is that correct?

A. At the moment?

Q. Yes. A. Yes.

Q. Now, you say there are also some folding operations? A. Yes.

Q. Pressing? A. Yes. [16]

Q. Sample making? A. Yes.

Q. Any other operations at Los Angeles?

A. Boxing, shipping, selling.

Q. Boxing, shipping, selling. All right.

How many folding people?

A. Do I have to answer that, too?

Q. Unless the Hearing Officer tells you——

(Testimony of Edward Moss.)

A. It is the first time I have been in court.

Mrs. Selvin: I am going to object to that on the ground there is no materiality, there is no contention that the four people who do folding are involved in this hearing.

Hearing Officer: I am going to overrule the objection, Mrs. Selvin. I think Mr. Rissman, that we need not go into the names of the persons in these other categories because nobody is contending that they are in the unit.

Mr. Rissman: I wasn't asking for that. I also want to get to the point of interrelationship between the unit of the cutters we seek and the San Fernando plant, and any other employees of the corporation, wherever they may be.

Hearing Officer: Approximately how many persons are engaged in folding?

The Witness: It varies, depending on the amount, around six, seven.

Q. (By Mr. Rissman): Well, when they are not doing folding, [17] do they do anything else?

A. They help with the boxing, something in their department primarily.

Q. Which department?

A. They have nothing to do with the cutting.

Q. Which department would you call that, folding and boxing?

A. Folding, boxing, helping to ship.

Q. How many in the pressing?

A. In the pressing we have three.

Q. How many sample?

(Testimony of Edward Moss.)

A. Well, you mean sewing, one.

Q. One?

A. Yes. Of course, you are talking about L. A.?

Q. That's right, we are just limiting ourselves to Los Angeles.

A. Because we make samples in San Fernando.

Q. How many in boxing?

A. Boxing, there is approximately three or four.

Q. And shipping? A. Three or four.

Q. Is that the same three or four? A. No.

Q. Selling, you have here?

A. Well, Mr. Amber—if a customer walks in, we sell; we try to.

Q. You do some selling at the place, and that is Mr. Amber's—— [18]

A. That is his primary——

Q. Are there any other employees of any kind employed by your corporation in the Los Angeles plant?

A. What do you mean by that, some other duty?

Q. Duties, yes?

A. That work in the plant, are you referring to salesmen that work outside?

Q. Are there outside salesmen?

A. Yes. We have outside salesmen across the country.

Q. That are employed directly by you or are they employed through selling agencies?

A. They are employed by us.

Q. Outside salesmen in various parts of the United States, is that right? A. Yes.

(Testimony of Edward Moss.)

Q. Do you have any truck drivers?

A. Special truck drivers?

Q. I don't know what you mean by special.

A. What do you mean by truck drivers?

Q. A person who drives a truck.

A. We have a truck.

Q. You have a truck? A. Yes.

Q. Who drives it?

A. One of our cutters. [19]

Q. One of the cutters? A. Yes.

Q. Which one? Is this one of the Los Angeles cutters?

A. No; one of the San Fernando cutters, but we change that off now and then. At the moment, he has been driving it for some time, take the truck away from him and give it to somebody else. You are asking right now, he is the one who drives it now.

Q. Do you ever employ a person who does nothing but truck driving? A. No.

Q. Do you have any janitors or maintenance men of any kind in the Los Angeles operation?

A. Yes.

Q. How many?

A. But that is all they do is—we don't have anybody; that is all they do, is janitor work. One of the boys in the shipping——

Q. The shipping room employees do some of the janitor work? A. Yes.

Q. Do you have any maintenance people, machinists?

(Testimony of Edward Moss.)

A. Not specially for the few machines.

Q. Have—how long have Oscar Gallegos and the other cutter whose name you don't recall been working in the Los Angeles plant? [20]

A. Well, one has only been there—Oscar has only been there a few weeks, but the other one, a few years.

Q. That is the fellow whose name you can't recall?

A. It will come to me.

Q. Do you recall his first name?

A. A girl, Helen O'Brien.

Q. Helen O'Brien has been there a few years, you say?

A. Yes.

Q. Will you describe for us the work done by Oscar Gallegos and Helen O'Brien, and if their work is different, then describe each one separately?

A. Well, they integrate their work. They cut samples and they cut trims and collars and so on and so forth, whatever I send them to do, they do.

Q. In other words, you send the work to them from San Fernando?

A. Yes.

Q. Do they do any marking?

A. What do you mean, marking; by that do you mean marking the patterns?

Q. Yes.

A. Well, Oscar makes some patterns and Helen does, too.

Q. Do they do any spreading?

A. They have to spread to cut.

Hearing Officer: Could you tell me what spreading is? [21]

(Testimony of Edward Moss.)

The Witness: Spreading is, what you have, a cutting ticket, the spreader spreads the goods and—in the amount that you want, so many smalls in each color, they spread it out on the table, the cutters cut it out.

Q. (By Mr. Rissman): Was Oscar Gallegos employed by you at the San Fernando plant?

A. No.

Q. How long have you had two cutters in Los Angeles?

A. Well, I had one for several years and one for a few months, few weeks. [22]

* * *

Q. (By Mr. Rissman): Before Mr. Gallegos was hired, for how long a period did you have only one cutter employed at the Los Angeles plant, and I am leaving Mr. Amber out of this?

A. Well, we had only one cutter for some time, periodically we would break somebody in.

Q. Some time, six months, a year?

A. I think about a year, although periodically, if we need somebody, we call them in to help out.

Q. I see. Now, getting to the San Fernando plant, what operations are performed there?

A. Cutting, make and trim.

Q. I understand it, and I think Mr. Helbling does, but whoever is going to read this in Washington probably—will you take the operations and—

A. Do you want a list of them, because there are lots of operations?

(Testimony of Edward Moss.)

Q. Let's start—what is the first operation, cutting?
A. Cutting.

Q. How many cutters?

A. Well, actually the first operation is pattern making and markers.

Q. All right. Pattern making and marking; how many people? [23]

A. We have one. Are you talking about San Fernando?

Q. Yes. A. One that does most of that.

Q. Who is that, you?

A. No; I don't do that.

Q. Who is it? A. That is Jack Ritzma.

Q. How do you spell his last name?

A. R-i-z-t-m-a.

Do I have to name all these people?

Hearing Officer: I don't think we are going to have to name all them by any manner.

The Witness: I don't want everybody bothered in the place because of this thing.

Q. (By Mr. Rissman): Let me say this, Mr. Moss: Whether you name them or not, those who are going to be visited in their houses will be visited in their houses; that is not the purpose of asking the names. The purpose of asking the name here is so we identify the occupations; for example, Mr. Ritzma is a foreman, is he not?
A. No.

Q. What are his duties?

A. His duties are the pattern making and marking.

Q. What are his other duties? A. Cutting.

(Testimony of Edward Moss.)

Q. What else? [24] A. That is it.

Q. How long has he been employed by you?

A. Several years.

Q. What does he have to do with engaging new cutters or employees?

A. Well, if I need any cutters, I talk it over with Jack, and we get together, somebody comes to work for us; we decide whether we want him or not, but he doesn't have the right to hire or fire.

Q. In other words, all he can do is recommend to you and you act on his recommendations?

A. Of course, if the man doesn't work out, he is just fired. He can recommend like anybody else can recommend that I hire. His word is not 100 per cent. I am the judge whether the man is hired or fired.

Q. You rely on his recommendations?

A. As well as the other people.

Q. Let's talk about him, Mr. Moss.

A. Well, he is——

Q. Wait; let me tell you something. You have hired a lady to represent you. Let her argue the case, you just answer the questions as to the facts. I didn't ask you about anybody else in the plant, I asked you about Jack Ritzma. Do you rely on his recommendation on hiring and firing?

A. To a degree. [25]

* * *

Mr. Rissman: The purpose of this is to show that Jack Ritzma is a supervisor.

(Testimony of Edward Moss.)

Hearing Officer: All these things are certainly material as to whether or not he is a supervisor.

Q. (By Mr. Rissman): Does he own any stock in the corporation? A. No.

Q. How many other cutters do you have in San Fernando? A. We have two cutters.

Q. Who are they?

A. Jack Riztma and Joe Rindoni.

Q. How long has Joe Rindoni been employed by you? A. Over a year. [27]

Q. Do you have anyone else doing cutting or marking or spreading?

A. Spreading, I have two spreaders.

Q. Who are they?

A. John Heady and Ben Albert.

Q. How long have those two people been employed?

A. Well, I think John has been there about a year and the other one is a little less than a year.

Q. How long have John Heady and Ben Albert been doing spreading?

A. The past week or two.

Q. Prior to the past week or two, they were doing cutting work?

A. Oh, no; they were doing both.

Q. And Joe Rindoni was doing both, too?

A. Yes.

Q. In other words, until last week, Joe Rindoni, John Heady, and Ben Albert were doing cutting and spreading; is that correct?

A. I think in the last two weeks, yes.

(Testimony of Edward Moss.)

Q. You have recently, within the last week or so, laid off or fired a cutter?

A. I think it is a couple of weeks.

Mrs. Selvin: Mr. Hearing Officer, I object to that question; whether he was laid off or terminated has no materiality.

Mr. Rissman: It certainly has. The petition alleges there were four cutters. Now the witness tells us there are only two, [28] but when we probe a little bit, we find there are three, and I want to find out what happened to the fourth one.

Hearing Officer: I think the witness can answer the question.

The Witness: Who are you referring to?

Q. (By Mr. Rissman): You tell me who you fired in the last two weeks.

Mrs. Selvin: Mr. Hearing Officer, I object to the terminology, that he fired anybody.

Hearing Officer: The original question was whether somebody was fired or laid off. Now, I think this witness—state the name and also tell us how this person was terminated, if one of those terms fit, could say he was laid off or discharged or quit, or whatever happened.

The Witness: He was——

Q. (By Mr. Rissman): Who was it?

A. You know his name better than I do. I can't think of his name at the moment; what is his name?

Q. Aldo Baldwin; what happened to him?

A. He was laid off.

Q. When? A. In the past couple of weeks.

(Testimony of Edward Moss.)

Q. Was he a cutter?

A. He was a spreader and a cutter.

Q. Spreader and cutter. In other words, Joe Rindoni, John [29] Heady, Ben Albert, and Aldo Baldwin are doing the same kind of work?

A. Yes.

Q. Now, prior to two weeks ago——

A. Well, pardon me; may I make an addition? Aldo Baldwin was only on a special job. He was doing just trims. He wasn't doing exactly what the other boys are doing.

Q. Now, John Heady and Ben Albert, for the past week or two have been confined only to spreading, is that right? A. Yes.

Q. Before that time, it is true, is it not, that Jack Riztma did not do any production cutting, but merely was a pattern maker and designer?

A. Not true.

Q. How long has Jack Riztma been doing the regular production cutting?

A. Well, off and on he has been cutting for the last few years, ever since he has been there. He was primarily, originally hired as a cutter, learned to make patterns and markers, so I primarily let him do that.

Then, when we need cutting, he does it; I mean, we don't have a fine line, a fine dividing line.

Q. How much time has he been spending on cutting in the last two weeks?

A. Not too much. [30]

About, I would say, at least, 35 per cent of his

(Testimony of Edward Moss.)

time, 20 per cent, I don't know. If he don't have any—his primary job is to make markers and patterns.

Q. How much time was he spending in the cutting when John Heady, Aldo Baldwin, and Ben Albert were employed as cutters?

A. About the same; he did all the samples, too, you know.

Q. Has there been a change in the dividing of your production in the last two weeks?

A. No.

Q. What is Joe Rindoni's method of pay, salary or hourly? A. Hourly.

Q. No piecework for cutters?

A. No; all hourly rate.

Q. What is Joe Rindoni's salary or hourly rate?

A. \$2.50 an hour.

Q. And how about John Heady?

A. 2.37½.

Q. And Ben Albert? A. \$2.37½.

Q. What was Aldo Baldwin's? A. \$2.50.

Q. Incidentally, while we are on cutters' salaries, how about Oscar Gallegos in Los Angeles?

A. \$3.00.

Q. And Helen O'Brien? [31] A. \$2.50.

Q. What other employees do you have at San Fernando, do you have operators? A. Right.

Q. Those are girls or men?

A. Primarily girls.

Q. They run sewing machines? A. Yes.

Q. And perform various sewing operations on

(Testimony of Edward Moss.)

the garments, is that correct?

A. Yes.

Q. How many are there?

A. Approximately?

Q. Approximately.

A. Are you going to break them down from sewing to buttonhole girl?

Q. I don't think so. In other words, it is true, is it not, that in the sewing operations you have collar makers, sleeve makers, buttonhole machine operators, girls who sew on buttons, others who may put on labels and various component parts?

A. Yes; they all use sewing machines.

Q. Over-all, how many sewing?

A. About 75.

Q. Who is in charge of the sewing machine operations?

A. Well, I. [32]

Q. You have over-all supervision, but do you have a forelady?

A. I have a forelady. Her name is Jessie Rising.

Q. R-i-s-i-n-g?

A. Yes.

Q. Keep this up, with a Jack Riztma, a Jessie Rising, we will run into a Rissman yet.

Now, are the sewing machine operators paid hourly wage or a piecework wage?

A. Some are hourly, some are piecework.

Q. What is the division of the 75, what portion would you say are piecework and what portion is hourly?

A. It varies. I can't make a definite statement. I don't know myself, but sometimes the girl starts on time work, and she works up to an operation, and

(Testimony of Edward Moss.)

goes on piecework. I would say there was 30 per cent time and 70 per cent—I am guessing.

Q. That is close enough. Normally, as a person becomes proficient in their job, they are put on a piecework basis?

A. Or if there is an opening?

Q. Yes. Now, Jessie Rising, what are her duties with respect to the operators?

A. She sees that they have work.

Q. What else?

A. If she has to train anybody, she does, any complaints—I don't know, all around the place.

Q. Does she have anything to do with hiring new girls or laying [33] girls off when they are not qualified?

A. They can't do that without my say so.

Q. In other words, she makes a recommendation?

A. Yes; she can make a recommendation.

Q. Is she paid a weekly salary or an hourly wage? A. Weekly.

Q. What is her—— A. \$85.00 a week.

Q. That is for a 40-hour week?

A. That's right.

Q. Incidentally, you told us before that one of the San Fernando cutters also drives a truck. Which one is he? A. Joe.

Q. Joe Rindoni? A. Yes.

* * *

Q. (By Mr. Rissman): Does Joe get extra com-

(Testimony of Edward Moss.)

compensation for driving the truck? A. Yes.

Q. How much? [34] A. \$15.00 a week.

Q. Now, is this truck driving of his done in addition to the 40 hours in the cutting department?

A. Yes.

Q. Does he live in Los Angeles?

A. Near Los Angeles.

Q. And—— A. On his way home.

Q. On his way home from San Fernando, he make deliveries from San Fernando to Los Angeles, picks up the load which he takes out the next morning when he goes to work; is that right?

A. Yes.

Q. What is it, a panel truck that he drives back and forth?

A. Yes. Of course, he gets free gas and the use of a car, all at the same time.

Q. You mean you don't charge him for the gas and the truck?

A. He don't have to pay for driving it from his house, in his own car.

Q. You say free gas, don't you mean you put gas in the car; you mean the gasoline used in driving the truck is paid for by the company?

A. That's right, but he is saved using his own car and saved gas—that is additional compensation.

Q. It is a fringe benefit?

A. Which we are happy to give him. [35]

Q. Does he have anyone with him in the truck or is he alone? A. He is alone.

(Testimony of Edward Moss.)

Q. How about the loading and unloading of the truck, does he do that?

A. If anybody is standing by, he helps.

Q. In addition to operators at San Fernando, do you have pressers? A. Yes.

Q. How many?

A. Do I have to answer that?

Hearing Officer: Yes, approximately.

The Witness: Five or six.

Q. (By Mr. Rissman): You have folders?

A. No.

Q. No folders? A. No.

Q. Do you do any operations at San Fernando beyond the pressing? A. No.

Q. After the shirts are manufactured in San Fernando and pressed, what happens to them?

A. They are sent down to Los Angeles.

Q. Now, the pressing that is done in San Fernando is not the finished pressing?

A. No. [36]

Q. That is the pressing which is necessary as part of the manufacturing operation, is that correct? A. Yes.

Q. So that the parts fit together properly and can be sewn together?

A. Under pressing?

Q. Under pressing, all right.

Do any of the four cutters that you have employed, that is, Joe Rindoni, John Heady, Ben Albert, or Aldo Baldwin, when he was working there, perform any operation in the sewing room?

(Testimony of Edward Moss.)

A. They didn't sew.

Q. Did they do any pressing? A. No.

Q. Did they do any——

A. They might have done some unloading; they didn't do any sewing.

Q. Didn't do any sewing? A. No.

Q. Did those four men ever do any work as part of their regular assignments outside of Joe Rindoni's truck driving in the Los Angeles operation?

A. No.

Q. Did Oscar Gallegos or Helen O'Brien, within the last three months, do any cutting in the San Fernando plant? [37] A. No.

Hearing Officer: Would you tell us, Mr. Moss, approximately how far apart these two plants are?

The Witness: 25 miles.

Hearing Officer: 25, all right.

Q. (By Mr. Rissman): Except for the truck which goes back and forth once a day, is there any other communication other than by telephone between the two plants?

A. Well, we send stuff out on the Greyhound Bus periodically, two or three or four times a week.

Q. It goes by Greyhound Bus, it goes from the Greyhound Bus Station here to the Greyhound Bus Station in San Fernando, it is not door to door?

A. That's right. We have piece goods for which we——

Q. But the only company-operated facility is this panel truck operated by the cutter, run by the cutter? A. We have no other trucks.

(Testimony of Edward Moss.)

Q. Do you have any other employees at San Fernando in addition to what you have told us?

A. Can you make that more specific?

Q. I am looking for information, for the record.

A. Well, I have in—you didn't mean trimming, and inspecting, and cleaning.

Mrs. Selvin: Bundling?

The Witness: Bundling, a few of the things that I can [38] think of.

Q. (By Mr. Rissman): What is trimming and who does it?

A. We have girls that trim the shirts.

Q. In other words, they cut the threads off?

A. Yes.

Q. Is that done by hand or by machine?

A. By hand.

Q. Do they use any handtools of any kind?

A. Scissors.

Q. Just the scissors? A. Yes.

Q. How many trimmers are there?

A. Well, it varies, approximately five, sometimes four and sometimes there is six.

Q. Under whose supervision do they work?

A. Mine.

Q. Everybody works under your supervision?

A. Yes.

Q. Who does the inspecting?

A. We have two girls or three, whatever is necessary.

Q. Where is the inspecting done?

A. San Fernando.

(Testimony of Edward Moss.)

Q. In what part of the plant?

A. The back end.

Q. Where is the cutting done in San [39] Fernando?
A. Alongside of a wall.

Q. Which wall?

A. I don't know. You know, it is the left-hand side as you come in.

Q. Well, north, south, east, or west?

A. I can't remember the direction there. I think it is north; you know, in San Fernando, it varies a lot. I would say it was north.

Q. North what? A. Northwest.

Q. The front part of the plant?

A. It is the front part, the front part is here and this is over here. (Indicating.)

Hearing Officer: Immediately after you come in the front way to the left?

The Witness: Yes.

Q. (By Mr. Rissman): Where is the trimming done with respect to the cutting?

A. It is—you come up along here on the left wall, and it is done back here near the back wall.

Q. Where is the inspecting done?

A. Same place.

Q. Same place as the trimming? A. Yes.

Hearing Officer: I take it, Mr. Moss, that this is one [40] large room, no partition in it at all?

The Witness: Just the office partition.

Hearing Officer: Just the office.

Q. (By Mr. Rissman): You mentioned cleaning, what is that?

(Testimony of Edward Moss.)

A. Well, I thought—sweeping up.

Q. Oh, janitor work? A. Yes.

Q. Do you have one or more janitors?

A. One; well, sometimes we have two.

Q. And Mrs. Selvin suggested bundling, how many bundlers? A. Five.

Q. Men or women? A. Women. [41]

* * *

Q. (By Hearing Officer): Mr. Moss, you said that the operation of the San Fernando plant ends with the making of the garments and their shipping them to Los Angeles, and I gathered the impression that there were further operations to be done on the garment before it was in shape to be sold? A. That is correct.

Q. Now, where do these garments go after they leave the San Fernando plant?

A. Los Angeles plant.

Q. And I take it, at that time, that all the sewing operations are complete, it is a completed garment? A. Yes.

Q. But it hasn't been finished, finished pressed?

A. That is right.

Q. From there, they are shipped to the Los Angeles plant? [52] A. Yes, sir.

Q. What happens to these garments at the Los Angeles plant?

A. Pressing, folding, boxing, shipped.

Q. Thank you.

Now, prior to the beginning of manufacture of

(Testimony of Edward Moss.)

the garment at the San Fernando plant, is there any preliminary work done that goes into the manufacture of that garment at the Los Angeles plant?

A. Of course, they are designed in Los Angeles, designing all takes place in Los Angeles.

Q. When a designer is finished with his work, what is it, what form?

A. Sometimes a drawing, sometimes a completed garment, sometimes a telephone conversation, but—where we have—you have styled so and so, change the collar, change the collar by putting another trim on it.

Q. All of this takes place in Los Angeles?

A. The primary designing, all the primary designing does.

Q. Is there any other operation in Los Angeles that takes place?

A. Sample making, cutting a sample, cutting of certain parts down there, the handling of goods that have to go on to other outfits, contractors, embroidery houses, painting houses, that also, but many a time we can cut a garment, send them down to Los Angeles; they in turn send it to the painter or [53] the embroider house or the completer.

Q. So, those would be special operations that you are not equipped to handle at the San Fernando plant; is that right?

A. Yes.

Q. Would that take place after the cutting is performed?

A. All those things are done after the cutting.

Q. But before any sewing?

(Testimony of Edward Moss.)

A. Before any sewing. Well, part of the sewing is done on other parts, the pleating and the cutting may be only the front.

Q. And that work is done by an outside contractor? A. Yes.

Q. And the Los Angeles plant, then, handles the contract arrangements?

A. Well, I arrange it all, but they handle the distributing of goods to the contractor. Many times after they are cut, we bundle them up and send them to the front, we send the fronts to Los Angeles and they in turn send it out. Sometimes they get goods in, don't come out of San Fernando.

Q. I see. Now, you mentioned that the Los Angeles plant does some sample making?

A. Yes.

Q. Are these samples used for selling to the trade on sales?

A. As well as given to me to go by.

Q. I see. They are also sent out to you as more or less as a pattern of production? [54]

A. So we can see all the parts.

Q. Is there any pattern making done in Los Angeles?

A. Yes; some original patterns; some originals are done there; some are done in San Fernando.

Q. What about the cutting that is performed in Los Angeles, do they perform any production cutting?

A. Yes. Well, when I say production. I should

(Testimony of Edward Moss.)

limit it to trim cutting, primarily, although they do some production cutting.

Q. By trim, do you mean collars and cuffs?

A. Collars and panels and other parts of the garment.

Q. I see, and those parts then would be shipped to San Fernando to be incorporated in the finished garment?

A. That's right. [55]

* * *

Cross-Examination

By Mrs. Selvin:

Q. Mr. Moss, you stated that the books of the company are kept in the Los Angeles office?

A. They are.

Q. Where is the payroll record kept for the San Fernando office?

A. In Los Angeles.

Q. In the Los Angeles office?

A. Yes.

Q. Where is the money deposited that comes in payment for the products you sell? [58]

A. Los Angeles.

Q. Is it a Los Angeles bank?

A. Yes.

Q. Does the San Fernando operation have a separate bank account?

A. No. [59]

* * *

Q. (By Mrs. Selvin): Would you describe the operation of spreading?

A. Spreading consists of receiving a chart on what to cut; a spreader then goes and gets the piece

(Testimony of Edward Moss.)

goods and lays it according to the chart. The chart tells him how many plys of each goods to put up.

Q. And this is the operation that is later checked with the bundlers? A. Yes.

Q. Before the cutter comes into the picture?

A. Yes. [69]

* * *

Q. (By Mrs. Selvin): In your testimony of questioning by Mr. Rissman, you described the operation of the Los Angeles plant and the San Fernando plant as an integrated plant?

A. It is true.

Q. And, by that, did you mean that part of the operation was [72] one place and part at the other, that they were integrated on the part analysis into one finished garment, finished garments that were sold? A. Yes.

* * *

Q. (By Mrs. Selvin): You testified that the plant in San Fernando had been in operation for about five years? A. Yes.

Q. Where was it located prior to that time?

A. Well, we have two plants in San Fernando, but on the same street. This is a new plant here. It is an enlarged plant from the one we had about six or eight months ago, but it was in San Fernando on the same street; but prior to that we were located in Los Angeles.

Q. You have just one plant in San Fernando at this time? A. Yes.

(Testimony of Edward Moss.)

Hearing Officer: Tell us approximately what the size of [73] the plant is.

The Witness: About 12,000 square feet. [74]

* * *

Redirect Examination

By Mr. Rissman:

* * *

Q. Who, if anyone, trains your cutters or do you hire only experienced cutters?

A. We assume they are experienced when they start to work. If they don't prove out, if they do badly, why, we feel they are inexperienced.

Q. Are you a cutter? A. No.

Q. Have you ever been?

A. I have spread and cut, but I wouldn't qualify myself to be a cutter.

Q. Why wouldn't you? [81]

A. Because I haven't made it my life's work.

Q. First let me ask you this: How long have you been in the shirt business?

A. The shirt business or in the clothing cut making?

Q. One at a time. A. Twenty-five years.

Q. In shirts? A. Shirts, about ten years.

Q. Is it about 15 years in addition to that in clothing?

A. Yes; in the clothing business, yes.

Q. Are you familiar with how long it takes to be a cutter, qualified?

(Testimony of Edward Moss.)

A. A qualified cutter?

Q. Yes.

A. Well, naturally it would depend on the man's ability. There is no training, length of training. If a man is apt, a good learner, he could become a cutter in three, four months.

Q. Have you ever trained any from scratch in three or four months?

A. I never trained any from scratch.

Q. Isn't it true that in order to become an all around qualified cutter to do spreading and marking and cutting, the type of man that you hire out there, it takes at least three or four years?

A. I don't think so. Let's say it takes a man—he has to [82] have experience. If you are referring to the ones we hire, I assume that they have had at least a year's experience, if that is what you are trying to bring out.

Q. Do you know how much experience any of your cutters have had before they came to work for you?

A. No.

Q. You told us before that it takes about a year to train a bundle girl, and you told us you can train a cutter in three or four months?

A. Well, I say to become—I assume that any that I hired would have had a year's experience prior to that, but a man could lay out and cut—

Q. In your opinion, does it take as much experience and training to become a bundle girl as it does to become a qualified cutter?

A. No.

Q. Have any of your cutters ever done any

(Testimony of Edward Moss.)

bundling, in your shop, as part of their regular routine work? A. No.

Q. Have any of the cutters been assigned to sit in the office and answer the phone, or whatever the girls do in the office?

A. Well, Jack answers the phone.

Q. Jack Riztma?

A. Yes; he can answer the phone. Also, Jessie could answer the phone or I could, or even, if it was lunch time and nobody [83] was around, anybody could answer it; nobody was assigned to answer it.

Q. During the working day when the cutters are at their cutting table and cutting or making spreads of cloth, do you ever send any of them to do any office work? A. No. [84]

* * *

GEORGE METALSKY

a witness called by and on behalf of the Petitioner, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Rissman:

Q. Will you state your name, please?

A. George Metalsky.

Q. What is your business?

A. Business representative of Amalgamated Clothing Workers, Los Angeles Joint Board.

(Testimony of George Metalsky.)

Q. How long have you been a member of the Amalgamated Clothing Workers?

A. Since 1927.

Q. Prior to the time that you became business representative, were you engaged in any branch of the needle trade industry? A. I was.

Q. What is your occupation? A. Cutter.

Q. And how long were you a cutter?

A. From 1927 to 1948.

Q. Where were you employed as a cutter, what places?

A. New York City, 1927, at Cohen & Goldman, until 1948, until I came to California. [110]

Q. Mr. Metalsky, are you familiar with the time it takes for a person to become qualified to be a cutter? A. I am.

Q. What is that time?

A. An average person would take at least three years.

Q. Within the Los Angeles Joint Board of the Amalgamated Clothing Workers of America, is there a cutter's local? A. There is.

Q. What is the number of that local?

A. Local 369.

Q. Who is eligible to become a member of Local 369?

A. Anybody in the clothing industry that is a cutter.

Q. In other words, you limit your membership to persons engaged in cutting operations?

A. I do.

(Testimony of George Metalsky.)

Q. What does that include, just cutters or are there any other occupations which classify generally under the term "cutters"?

A. Markers, cutters and spreaders.

Q. You have heard the testimony this morning in this hearing, and the occupations described both by Mr. Baldwin and by Mr. Moss; from the basis of the testimony that you have heard, the following persons, are they eligible in the cutter's local, Joe Rindoni?

A. Yes, sir. [111]

Q. John Heady? A. Yes, sir.

Q. Ben Albert? A. Yes, sir.

Mrs. Selvin: Just a minute.

Q. (By Mr. Rissman): Would the girls who do the bundle work as described by Mr. Moss be eligible for membership in the cutter's local?

A. They would not.

Q. Does the petitioner in this case, the union, seek to represent in the present bargaining unit anyone other than the cutters and the spreaders?

A. Just the cutters and spreaders.

* * *

Received October 23, 1956.

Received in evidence April 29, 1957, as General Counsel's Exhibit No. 5-I. [112]

Before the National Labor Relations Board
Twenty-first Region

Case No. 21-CA-2657

In the Matter of:

MOSS AMBER MANUFACTURING COM-
PANY,

and

LOS ANGELES JOINT BOARD, AMALGA-
MATED CLOTHING WORKERS OF
AMERICA.

Monday, April 29, 1957

Pursuant to notice, the above-entitled matter
came on for hearing at 10:00 o'clock a.m.

Before: David F. Doyle, Trial Examiner.

Appearances:

GEORGE H. O'BRIEN,

Appearing on Behalf of the General Coun-
sel of the National Labor Relations
Board.

FRANK A. MOURITSEN, and
MRS. EDWIN SELVIN,

Appearing on Behalf of Moss Amber
Manufacturing Company.

WIRIN, RISSMAN & OKRAND, by
ROBERT R. RISSMAN, and
JEROME POSNER, and
GRISELDA KUHLMAN,

Appearing on Behalf of Los Angeles Joint
Board, Amalgamated Clothing Workers
of America.

* * *

Mr. O'Brien: Mr. Examiner, I shall ask the reporter to mark for identification the following documents:

As General Counsel's Exhibit 2, a copy of a letter dated February 12, 1957, addressed to Mr. Edward Moss, Moss Amber Corporation, and the original of which bore the signature of Jerome Posner, Manager of the Los Angeles Joint Board, the charging union;

As General Counsel's Exhibit 3, a copy of—

Mr. Mouritsen: Can we take a stipulation separately? We are willing to offer a stipulation as to Board's Exhibit 2 for identification, that it was sent by a man proposed to be Mr. Posner and received by Mr. Edward Moss.

Mr. Rissman: May the stipulation include the date of receipt by Mr. Moss?

Mr. O'Brien: I would assume there is no way we can tell within a day or so afterwards.

Mr. Rissman: Undoubtedly received the 13th, because the Answer is dated the 13th.

Mr. O'Brien: The correspondence consists of only three [13*] letters, and I suggest that they be

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

identified together and received under the same stipulation.

Trial Examiner: If that is satisfactory to you, gentlemen, the stipulation is accepted, and the documents are received in evidence.

Mr. O'Brien: Now, Mr. Examiner, No. 3 is a copy of a certified mail special delivery letter dated February 13, 1957, addressed to Jerome Posner, Amalgamated Clothing Workers of America, from Moss Amber, Inc., by Edward Moss. This letter acknowledges receipt of the letter of February 12, 1957.

As General Counsel's Exhibit 4, a copy of a letter dated February 15, 1957, addressed to Jerome Posner, bearing the signature of Mrs. Edwin Selvin, and by way of stipulation, I suggest that we agree that these copies contain the text in exchange of correspondence between the charging union and the respondent, and that each was received in due course shortly after the date it bears.

(Thereupon, the documents above referred to were marked General Counsel's Exhibits Nos. 2, 3 and 4 for identification.)

Mr. Mouritsen: So stipulated.

Trial Examiner: So stipulated.

Mr. O'Brien: Could I offer Exhibits 2, 3 and 4 in evidence?

Mr. Mouritsen: No objection.

Mr. Rissman: No objection. [14]

Mrs. Selvin: No objection.

Trial Examiner: The documents are received as General Counsel's 2, 3 and 4.

(The documents heretofore marked General Counsel's Exhibits Nos. 2, 3 and 4 for identification were received in evidence.) [15]

GENERAL COUNSEL'S EXHIBIT No. 2

Los Angeles Joint Board
Amalgamated Clothing Workers of America
2501 So. Hill Street, Los Angeles 7

(Copy)

February 12, 1957.

Certified Mail
Special Delivery

Mr. Edward Moss,
Moss Amber Corp.,
1825-1st Street,
San Fernando, California.

Dear Mr. Moss:

We have received the certification from the National Labor Relations Board authorizing us to represent the cutters.

I would appreciate it if you would let me know when we can arrange to meet within the next five days to discuss this matter.

Very truly yours,

JEROME POSNER,
Manager.

JP/mc

278 acwa

Received February 26, 1957.

Received in evidence April 29, 1957.

GENERAL COUNSEL'S EXHIBIT No. 4

February 15, 1957.

Via Registered Mail

Return Receipt Requested

Jerome Posner,

Manager, Los Angeles Joint Board, Amalgamated Clothing Workers of America, AFL-CIO,

2501 South Hill Street,

Los Angeles 7, California.

Re: 21-RC-4553

Moss-Amber Corporation

Dear Sir:

Your certified mail, special delivery letter, addressed to Mr. Edward Moss of Moss-Amber Corporation, has been forwarded to me for reply.

As you are aware, we made formal objection to the Board's ruling as to the appropriate bargaining unit of employees. We did not participate in the election, nor allow it to be held on company prem-

ises, nor did we post the notices of such election. Nor will we now recognize the certification issued as a result of the election held outside the company's plant.

This action is taken pursuant to Section 10 (f) of the National Labor Relations Act, which section provides the means by which our objections may be reviewed by a United States Circuit Court or by the United States Court of Appeals. When and if a "final Order of the Board" issues, after hearing of our refusal to bargain, it is our intention to invoke this right of a Court review of our objections.

In the meantime, you may consider this letter refusal to meet and discuss any terms of a contract.

Yours truly,

MRS. EDWIN SELVIN,

/s/ MRS. EDWIN SELVIN.

S/bn-cc Mr. Edward Moss.

Moss-Amber Corporation,
1825 First Street,
San Fernando, California.

Henry W. Becker,
Regional Director, National Labor Relations Board,
111 West Seventh Street,
Los Angeles 14, Calif.

Received February 18, 1957.

Received in evidence April 29, 1957.

* * *

Mr. Mouritsen: I will call Griselda Kuhlman as an adverse witness.

GRISELDA KUHLMAN

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Mouritsen:

Q. Miss Kuhlman, you signed the petition in the original representation hearing in this matter; is that correct? A. Yes; I did.

Mr. O'Brien: Objection. It is in the record. It is irrelevant and immaterial as far as these proceedings are concerned.

Trial Examiner: Well, I will overrule that objection, and take the answer. [25]

What was your answer, Miss Kuhlman?

The Witness: I did.

Q. (By Mr. Mouritsen): You also signed a complaint; is that correct? A. Yes, sir.

Mr. O'Brien: Objection.

Trial Examiner: I will overrule that, but I don't know where Mr. Mouritsen is going. I expect this is preliminary. Then I may rule on this.

Of course, you understand the basis of these objections, Mr. Mouritsen, that all of these things are matters of public record in this proceeding up to now, and this unfair labor practice proceeding in no way can become a retrial or another rehash of

(Testimony of Griselda Kuhlman.)

all the things which were brought out on the representation case.

I am saying that for your guidance.

Mr. Mouritsen: Do I understand, your Honor, that we are precluded from offering any testimony with reference to the appropriateness of the unit in this matter, or the identity and the activities of this organization in this proceeding, because we can save a lot of time, if your Honor will rule on that without having heard the——

Trial Examiner: When you say that you may not offer any evidence, I won't rule on it in that fashion. What evidence do you intend to prove? What evidence do you wish to adduce [26] here?

Mr. Mouritsen: I will develop that as I go along, your Honor. I think your Honor made a rather broad statement. Now, we can take your ruling and leave. However, I would suggest a more orderly proceeding as we go along and take it item by item.

Trial Examiner: Well, I gave you my general thinking on it because the ruling is very broad, and don't think for a moment that I will hesitate to give a broad ruling on this and in this proceeding in about five minutes, because as the case stands now, you have a proceeding which has been decided by the Board and the appropriateness of this unit.

Now, I don't know of any evidence that I might take which would show that the unit is inappropriate.

Now, if you will state your reasons why you think it is inappropriate, then I would pass on that, and

(Testimony of Griselda Kuhlman.)

if I see any relevancy, or see any way I could take it, well, perhaps I will take it.

Mr. Mouritsen: Well, shall we proceed and I will attempt——

Trial Examiner: I am asking you to put your cards on the table.

Mr. Mouritsen: Very well, your Honor. I object to this manner of proceeding as being prejudicial to my client. However, in conformity with your Honor's ruling, I will so [27] proceed.

Trial Examiner: All right, sir.

Mr. Mouritsen: I will propose to show, and I object in front of this and other witnesses who are adverse, and whom I will have to call, propose to show, your Honor, that the basis of the Board's decision as to the appropriateness of the unit, is based upon a number of mistakes in fact, and upon incomplete information. For example, in reading from Board's Exhibit 5-D, which is the Decision and Direction of Election, if the Examiner please, the paragraph at the top of Page 3 of that exhibit reads as follows:

“Upon the entire record herein, and particularly in view of the geographical separation of the two plants, their different functions, the”—I mean as to the first one, geographical, there is no dispute, their different functions. That, we propose to show is entirely erroneous and has no basis either in fact or in the transcript itself, and we propose to offer additional evidence with respect to that.

(Testimony of Griselda Kuhlman.)

The other fact upon which the Board relies in finding this unit:

“The lack of employee interchange and bargaining history.” The bargaining history very obviously is a makeway proposition since there has been no bargaining at all, and as to the lack of employee interchange, we propose to show evidence as to that. [28]

“And the fact that no labor organization currently seeks to represent employees at both plants.” We propose to offer evidence as to that, and to show that not only was this labor organization—and again I object to this disclosure prematurely, the fact that the labor organization here involved was attempting not only to organize other employees, the operators and bundlers, sewing machine operators, and all others, but those cutters at the Los Angeles plant as well.

Now, that is what we propose to offer and we propose to offer further to show that the employees whom they seek to organize, bundlers as well as cutters, are eligible for membership in this organization, or this bargaining agent, or whatever it is, and we propose to find out with respect to that that they are actively seeking to represent them, and that this attempt in effect is merely an attempt to carve out an unrealistic unit based upon the extent of organization. That is what we propose to do, and I submit, your Honor, by making this disclosure in front of these witnesses, our case is seriously handicapped.

(Testimony of Griselda Kuhlman.)

Trial Examiner: All right, I will give you a ruling on that now.

The situation, as I see it at this point, Mr. Mouritsen, is simply this: You have had a representation case and evidence was adduced and on the basis of that the Board came [29] to certain conclusions and issued a certificate to this labor organization. Now, if you claim that they are in error in that in any regard, in regard to that certification, when you take up this case on appeal, you will have a right to argue those things to the Board, but here, I proceed on the basis of this proceeding. Here before me now is a certification of this union. I can't take evidence which is behind the certification of the Board and make an independent judgment of my own, so I will give you a ruling now, that the matters which you propose to bring up in this proceeding are not relevant to the issues raised by this complaint in answer, and that they are properly things which should be and may be argued to the Board on appeal in accordance with the regulations and the Act.

I am not in a position, nor is it my function here, to give you a second representation proceeding, and I grant you an exception to my ruling.

Mr. Mouritsen: I understood we had an automatic exception.

Then, may I further proceed?

These have been shown to counsel. May they be given—may they be marked for identification?

Trial Examiner: Well, I think—just a second,

(Testimony of Griselda Kuhlman.)

to help the reporter here. Just to hand him a handful of those things, I don't think we can proceed in an orderly fashion that way. [30] You will have to give them some designation yourself, or some——

Mr. Mouritsen: I suggest he mark them Respondent's A, B, C, and then I would make an offer of proof and I'd identify them for the record.

Trial Examiner: All right, let's take a moment and he can mark them in accordance with your wishes, and you can offer them.

Mr. Mouritsen: Then I will ask this witness to remain so I can make an offer of proof with reference to her.

Trial Examiner: All right, we will take a few minutes while you mark those documents as requested by counsel.

(Thereupon, the documents above referred to were marked Respondent's Exhibits Nos. 1 through 6 for identification.)

Mr. Mouritsen: Now, I will make an offer of proof.

I am informed and believe, and, of course, you must realize my difficulty; this is an adverse witness. However, I expect she can testify——

Mr. Rissman: He has called her an adverse witness several times. I submit it is unjustified and note the fact that he has called this witness as his witness. He has asked her two questions which she has answered willingly and co-operatively. There is nothing in her attitude nor in her position which

(Testimony of Griselda Kuhlman.)

justifies a designation such as not even under the Federal Rules of Procedure.

Trial Examiner: All right, I will decide whether she is [31] adverse or not at the right time.

Q. (By Mr. Mouritsen): Well, let me ask you this: Have I ever talked with you, Miss Kuhlman?

A. No, sir.

Q. Have you ever seen me before or have I ever—well, I have never talked to you before; is that correct?

A. That is correct.

Mr. Mouritsen: I am informed and believe, therefore, submitting an offer of proof through this witness, that she is an organizer for the Los Angeles Joint Board, Amalgamated Clothing Workers of America, that that Joint Board, as I understand it, is made up of representatives of a number of local unions of Amalgamated Clothing Workers of America, that these comprise not only cutters but operators, locals, and probably pressers, and that I am not sure, but in any event represent various locals that comprise the entire employee classification in the garment industries so far as men's wear is concerned, that while they were that, she had signed the original petition which is part of this record as Board's Exhibit 5-A, and at the same time, both before and after this petition was signed, the Los Angeles Joint Board was attempting to organize employees at the same company, not only cutters but operators and all of the classifications in the employer's plant, both in Los Angeles and in San Fernando. I think that's about all on her. [32]

(Testimony of Griselda Kuhlman.)

Now, I would further propose as an offer of proof and in substantiation of the fact that organizational efforts were attempted among other employees at the same time they were attempting to organize the cutters, both in Los Angeles location, and in San Fernando.

I would offer Respondent's Exhibit No. 2 for identification, which is a card of Richard Webster, an organizer, which was passed on December 28, 1956, at the Los Angeles plant of the respondent herein.

I would further offer in evidence Respondent's 1 for identification, which is a dodger, or leaflet or—with a designation card attached thereto that was also passed out by this same organization, the petitioning union and the complaining union, at the Los Angeles plant, and that was passed out at or about the same time in 1956, namely, December.

I further offer as Respondent's Exhibit 3 for identification, which bears the notation 8/24/56, with the added testimony that this dodger was, with a card appended, or leaflet, as it may be called, passed out at the San Fernando plant of the respondent at or about the date it bears, and was passed not only to cutters but to operators and to all the other employees there employed, and it speaks for itself.

I would further offer Respondent's Exhibit 4 for identification, which bears date April 3, 1957, with the [33] further testimony that this dodger, handbill, or what-you-will, with an application card directed to Amalgamated Clothing Workers of Amer-

(Testimony of Griselda Kuhlman.)

ica, was passed out at the San Fernando plant, not only to cutters and operators, but other employees classifications.

I further offer as Respondent's Exhibit 5 for identification, a further leaflet, or handbill, that was dated April 18, 1957, with the further testimony that it, too, was passed out at the San Fernando plant of the respondent at or about the date it bears, and not only to cutters but to all other employees at the plant.

I would further offer in evidence Respondent's Exhibit 6 for identification, with the further testimony that it was received, sent and received by cutters at the San Fernando plant, and that this bears the signature of Ben Albert, the same one who was identified as a cutter in the prior proceeding and working at the San Fernando plant, apparently sent out by some organization called United Cutters Association. That is the same address as the charging union here, 2501 South Hill Street, Los Angeles, and some explanation should be made as to its identity; we feel it should be cleared up.

I would further state in my offer of proof, your Honor, that many of these matters that came into the case came at a comparatively late date, that not more than a week or so ago that many of these matters came to our attention after [34] the proceedings in the earlier case, and that were not available for testimony at that time to the knowledge of the representative who conducted the hearing.

(Testimony of Griselda Kuhlman.)

I would also offer, your Honor, in evidence—I would ask that these be marked——

Trial Examiner: Well, before we mark any more, let's dispose of those we have.

What is the purpose? What would these documents prove, and where are they relevant to this charge which states that this company did not bargain with a certified union?

Mr. Mouritsen: The basis of the charge, your Honor, as I understand it, is that there can be a refusal to bargain only upon—only where the union has been designated as the bargaining agent by a majority of the employees within an appropriate bargaining unit.

Trial Examiner: That has been decided by the Board in the representation proceeding and upon the basis of the election which was conducted, and all the proceedings up to the certification of this union beside the employees who are in this unit have designated as in. That is now *res adjudicata*, as far as I am concerned.

Mr. Mouritsen: Well, your Honor, I understood that we would be unable to get an appeal from that as it does not represent a final order of the Board from which an appeal can be taken. Therefore, the only way we could test that matter [35] would be upon application or revising the Board request for enforcement of an order.

I understand, however, your Honor, in a proceeding of this type that since it is based upon a finding, that it is a refusal to bargain within an

(Testimony of Griselda Kuhlman.)

appropriate unit, I do not understand, nor do I see that we are precluded from offering evidence which was not available at the time of the representation hearing, going for that very question, since it is a crux of the whole matter.

Trial Examiner: I will have a short statement from you, Mr. O'Brien. That is, what is your disposition with regard to these matters which counsel has brought up?

Mr. O'Brien: Well, I have several objections.

First of all, counsel for the respondent has characterized the witness on the stand as being adverse.

Trial Examiner: Well, that's the most minor part of this thing. How about these matters which counsel claims are relevant to this proceeding here, these documents which are now before me?

Mr. O'Brien: There is only one other preliminary matter here and that was the basis for my last remark, Mr. Examiner. That is that Mr. Mouritsen says he has not spoken to this witness and I have very serious doubts whether she would be competent to testify to the matters contained in Mr. Mouritsen's offer of proof. [36]

With that technicality out of the way, everything that Mr. Mouritsen has said relates to matters which either were presented to the Board in the representation case or could have been presented to the Board in the representation case, and it is a little bit late to offer that type of evidence here now.

My objection is to the receipt of any of these

(Testimony of Griselda Kuhlman.)

documents in evidence, and to consideration of Mr. Mouritsen's offer of proof based on the fact that it was irrelevant, immaterial, and will not tend to prove any of the issues in this proceeding.

Trial Examiner: That's my understanding of it, and I will not receive the documents in evidence, and your offer of proof is noted, and I will not accept the proof as outlined on the ground that these were all matters which were litigated or could have been litigated, or should have been litigated in the representation proceeding.

(The documents heretofore marked Respondent's Exhibits Nos. 1 through 6 for identification were rejected.)

Mr. Rissman: I would like to point out, in addition to what Mr. O'Brien has said, that at least two or three of the documents which Mr. Mouritsen referred and had marked for identification apparently came into existence subsequent to the issuance of the complaint in this unfair labor practice proceeding.

Mr. Mouritsen: I think I gave the date to everyone. [37]

Mr. Rissman: April 3, 1957, and April 18, 1957, were subsequent to April 1, 1957, the date of the issuance of the complaint. [38]

EDWARD MOSS

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Mouritsen:

Q. What is your full name?

A. Edward Moss.

Q. And where do you reside?

A. 4449 Cameilla, North Hollywood.

Q. And you are vice president of Moss Amber Manufacturing Company, the respondent herein?

A. I am.

Q. Did you testify in the earlier proceeding?

A. I did.

Q. Now——

Mr. Mouritsen: Mr. Examiner I would propose to go, with this witness, into the cutting functions that are performed at the Los Angeles plant and demonstrate those so the Examiner might know just what the earlier references in the testimony as to panel trim and so forth mean, and I will take the ruling and make an offer of proof. [40]

Trial Examiner: All right, I think you are up against the same situation on this point as you were before, Mr. Mouritsen. This matter—this is a matter which is properly included in the representation case, and is irrelevant and immaterial to this proceeding.

The decision of the appropriate unit is the Board's decision and has been made upon the evidence adduced there at the hearing in which everyone par-

(Testimony of Edward Moss.)

ticipated, and my only function here is to decide the issues raised by this complaint and answer, and that begins with reliance in this proceeding upon the certificates of the Board in the prior proceeding, so I can't see how evidence concerning the operations which the various employees perform would be relevant or material to this proceeding, nor how I could accept such evidence.

To do so, would in effect, be conducting a second representation hearing. So, my ruling is that this evidence which you offer—this proof which you offer is irrelevant and immaterial and it is rejected.

Mr. Mouritsen: Very well, I am informed, and believe I offered to prove with this witness that the cutting operations for the completed garments, that approximately 90 per cent of the garments that are shipped carry what is known as trim, that I would show through this witness that the trim that might be expected to be a very minor item [41] without being fully explained, as demonstrated here, is a large part of a garment. In other words, demonstrating with the brown shirt that this strip across the chest is what is known as trim. (Indicating.) As well as the collar on that garment, and that further that on this garment the collar and this insert is what is known as trim, a very substantial and integral part of the garment.

Further, that on a garment of this type that this is what is known as a panel, since it goes only to the side, and which comprises the major part of the front, that 90 per cent of the garments manufac-

(Testimony of Edward Moss.)

tured by the respondent, which 90 per cent of the garment bears.

Through this witness, we would show that the trim for the garments, completed garments, is cut at the Los Angeles plant, emphasizing that 90 per cent of the garment bears trim and then is transported as a part of the garment to the San Fernando plant where it is then incorporated into the completed garment and then is transported back to the Los Angeles plant after the trim has been incorporated in it for shipment and so forth, and that through inadvertence that fact or those facts, where not fully developed at the earlier hearing in the matter, that—

Trial Examiner: Have you finished with that feature?

Mr. Mouritsen: No, I am just thinking, if I may have a moment, your Honor. [42]

Trial Examiner: Well, while you are thinking, I might note on the record that counsel has produced three shirts here, three sport shirts, and his last remarks were directed to these particular shirts while he made some indication of the various parts of the shirts which he meant there appearing to be some different colored cloth, placed on different shirts—parts of the shirt, either on the shirt front or collar, which he indicated as trim.

* * *

Mr. Mouritsen: Further, I would offer to prove through this witness that the markers from which the trim is cut is first made in the San Fernando plant and transferred to the Los Angeles plant be-

(Testimony of Edward Moss.)

fore the trim is cut, that the patterns are made in the San Fernando plant and transferred to the Los Angeles plant as part of the cutting operation, and thirdly, that the materials are transported from the San Fernando plant to the Los Angeles plant and that all of these things, these markers, patterns, materials, are part of the cutting operation. [43]

I think that's all.

Trial Examiner: The proof is rejected on the same ground as I have specified before.

All these things are matters which are pertinent and proper to the representation proceeding.

* * *

Mr. Mouritsen: I would further offer to prove through this witness that the fact there has been no employee interchange in cutters is merely a happenstance, and there is nothing basically wrong or fundamentally opposed to interchanging employees, and that in truth and in fact Mr. Gallegos, one of the cutters, has occasionally done some interchanging, and there is no reason why there shouldn't be interchanging since they do the same type of work, and the only thing being that in the past it just hasn't happened; there's nothing to prevent it.

I think that completes my offer of proof, your Honor.

Trial Examiner: All right, that proof is also rejected under the same ruling as I gave you before on the same basis. [44]

* * *

Received May 7, 1957.

United States Court of Appeals
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

MOSS AMBER MFG. CO.,

Respondent.

CERTIFICATE OF THE NATIONAL LABOR
RELATIONS BOARD

The National Labor Relations Board by its Executive Secretary, duly authorized by Section 102.84, Rules and Regulations of the National Labor Relations Board—Series 6, as amended, hereby certifies that the documents set forth below constitute a full and accurate transcript of the entire record of proceedings had before the Board, entitled, “In the Matter of Moss Amber Corporation and Los Angeles Joint Board, Amalgamated Clothing Workers of America, AFL-CIO,” Case No. 21-RC-4553; and “In the Matter of Moss Amber Mfg. Co. and Los Angeles Joint Board, Amalgamated Clothing Workers of America, AFL-CIO,” Case No. 21-CA-2657, such transcript including the pleadings and testimony and evidence upon which the order of the Board in said proceedings was entered, and including also the findings and order of the Board.

The documents attached hereto are as follows:

21-CA-2657

1. Stenographic transcript of testimony taken before Trial Examiner David F. Doyle on April 29, 1957, together with all exhibits introduced in evidence,¹ as well as rejected exhibits.

2. Copy of the Trial Examiner's Intermediate Report, dated May 21, 1957 (annexed to item 4 hereof).

3. Copy of Respondent's exceptions to Intermediate Report, recommended order and to various rulings of the Trial Examiner received June 13, 1957.

4. Copy of Decision and Order issued by the National Labor Relations Board on December 12, 1957, with Intermediate Report annexed.

In Testimony Whereof, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the City of Washington, District of Columbia, this 26th day of April, 1958.

[Seal]

NATIONAL LABOR
RELATIONS BOARD,

/s/ FRANK M. KLEILER,
Executive Secretary.

¹This includes the stenographic transcript of testimony and exhibits in Case No. 21-RC-4553.

[Endorsed]: No. 15952. United States Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. Moss Amber Mfg. Co., Respondent. Transcript of Record. Petition for Enforcement of an Order of the National Labor Relations Board.

Filed March 31, 1958.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

United States Court of Appeals
for the Ninth Circuit

No. 15952

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

MOSS AMBER MFG. CO.,

Respondent.

PETITION FOR ENFORCEMENT OF AN
ORDER OF THE NATIONAL LABOR
RELATIONS BOARD

To the Honorable, the Judges of the United States
Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Secs. 151, et seq.), hereinafter called the Act, respectfully petitions this Court for the enforcement of its Order against Respondent, Moss Amber Mfg. Company, San Fernando, California, its officers, agents, successors, and assigns. The proceedings resulting in said Order are known upon the records of the Board as "In the Matter of Moss-Amber Corporation and Los Angeles Joint Board, Amalgamated Clothing Workers of America, AFL-CIO," Case No. 21-RC-4553; and "In the Matter of Moss Amber Mfg. Co. and Los Angeles Joint Board, Amalgamated Clothing Workers of America, AFL-CIO," Case No. 21-CA-2657.

In support of this petition the Board respectfully shows:

(1) Respondent is a California corporation engaged in business in the State of California, within this judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10(e) of the National Labor Relations Act, as amended.

(2) Upon due proceedings had before the Board in said matter, the Board on December 12, 1957, duly stated its findings of fact and conclusions of law, and issued an Order directed to the Respondent, its officers, agents, successors and assigns. On the same date, the Board's Decision and Order was served upon Respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Respondent's counsel.

(3) Pursuant to Section 10(e) of the National Labor Relations Act, as amended, the Board is certifying and filing with this Court a transcript of the entire record of the proceedings before the Board upon which the said Order was entered, which transcript includes the pleadings, testimony and evidence, findings of fact, conclusions of law, and the Order of the Board sought to be enforced.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon Respondent and that this Court take jurisdiction of the proceeding and of the questions determined therein.

and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon the Order made thereupon a decree enforcing in whole said Order of the Board, and requiring Respondent, its officers, agents, successors, and assigns, to comply therewith.

NATIONAL LABOR
RELATIONS BOARD,

/s/ THOMAS J. McDERMOTT,
Associate General Counsel.

Dated at Washington, D. C., this 26th day of April, 1958.

[Endorsed]: Filed March 27, 1958.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS

The National Labor Relations Board, petitioner herein, herewith submits the following statement of points pursuant to Rule 17 of this Court:

1. The Board acted within its discretion in determining the appropriate bargaining unit in this case.
2. The Board properly held that respondent's refusal to bargain with the certified union violated Section 8 (a) (5) and (1) of the Act.
3. The Board's procedure and order were valid and proper.

Respectfully submitted,

NATIONAL LABOR
RELATIONS BOARD,

/s/ THOMAS J. McDERMOTT,
Associate General Counsel.

Dated at Washington, D. C., this 26th day of
April, 1958.

[Endorsed]: Filed March 27, 1958.

[Title of Court of Appeals and Cause.]

RESPONDENT'S ANSWER TO PETITION
FOR ENFORCEMENT OF AN ORDER OF
THE NATIONAL LABOR RELATIONS
BOARD

Comes now Moss Amber Mfg. Co., Respondent herein, and in answer to Petitioner's Petition for Enforcement admits, denies and alleges:

1. Respondent admits the allegations contained in paragraph (1) of said Petition, except that Respondent denies that any unfair labor practices were committed by Respondent.

2. Respondent admits the allegations contained in paragraph (2) of said Petition, except that Respondent denies that it was afforded due process in said proceedings and on the contrary alleges that it was denied due process in said proceedings.

3. In further answer to said Petition, Respondent alleges that in the original representation proceedings which led to the determination of the appropriate bargaining unit, the Board was precluded from exercising an informed discretion by failure of the Petitioner therein to make disclosure of material and pertinent facts peculiarly within its knowledge.

4. Respondent denies that it was guilty of a refusal to bargain within the meaning of the Act.

5. Respondent denies that the Board's procedure in the unfair practice hearing was proper, and alleges in this connection that the failure to receive and consider evidence proffered by Respondent constitutes denial of due process to Respondent.

Wherefore, Respondent having fully answered the allegations contained in the Petition for Enforcement, respectfully requests that it be denied.

/s/ FRANK A. MOURITSEN,
Attorney for Respondent.

[Endorsed]: Filed April 16, 1958.

